

HMG, Guru Projects & Group of Companies – Terms and Conditions of Trade

1. **Definitions**
- 1.1 "HMG Guru" means HMG Guru group of companies as stipulated in Annexure 1, its successors and assigns or any person acting on behalf of and with the authority of HMG Guru.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting HMG Guru to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a party of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Consultant" means any person or persons engaged by HMG Guru to provide specialised works on behalf of the Client.
- 1.4 "Services" mean all Services (including consultation, manufacturing and/or installation services) or Goods provided supplied by HMG Guru to the Client at the Client's request from time to time (where the context so permits the terms "Services" or "Goods" shall be interchangeable for the other).
- 1.5 "Documentation" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by HMG Guru in the course of it conducting, or supplying to the Client, any Services.
- 1.6 "Fee" means the Fee payable (plus any GST where applicable) for the Services as agreed between HMG Guru and the Client in accordance with clause 5 of this Agreement.
- 1.7 "Project" means the Project as specified in the "Scope of Services, Quotation and/or Letter of Engagement that will read in conjunction with this Agreement for which the 5.7 Services are provided by HMG Guru to the Client.
- 1.8 "Agreement" means this Agreement including any schedule and any other Agreement expressed to be supplemental to this Agreement and all other amendments to such a 5.8 document.
- 1.9 "Interest Rate" means the interest rate calculated in accordance with clause 23.1 of this Agreement.
- 1.10 "Writing" includes printing, typing, lithography and other 5.9 modes of reproducing words in a visible form and "written" has a corresponding meaning.
2. **Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by HMG Guru.
- 2.2 These terms and conditions may only be amended with both parties consent in Writing and shall prevail to the extent of 5.10 any inconsistency with any other document or Agreement between the Client and HMG Guru.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred 6. to in that Act.
- 2.4 The Client accepts and acknowledges that HMG Guru reserves the right to appoint at HMG Guru's discretion a project manager or managers to oversee the Services up to and including completion, the Client accepts that this party may be subject to change without notice, during the course of the contract.
- 2.5 In the event that HMG Guru is required to provide the Services outside normal business hours (including but not limited to, working through lunch breaks, weekends and/or Public Holidays) then HMG Guru reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between HMG Guru and the Client.
- 2.6 The Client accepts and agrees that in the event that there is jointing of Goods, due to the size of Goods or access to buildings, the placement and method these joints will be at the sole discretion of HMG Guru, unless otherwise stated in writing, show on plans or contained within the specifications.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that HMG Guru shall, without prejudice, accept no liability in respect of any 6.2 alleged or actual error(s) and/or omission(s); and
 - (a) resulting from an inadvertent mistake made by HMG Guru in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by HMG Guru in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of HMG Guru; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Client shall give HMG Guru not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax numbers, change of trustees or business practice). The Client shall be liable for any loss incurred by HMG Guru as a result of the Client's failure to comply with this clause.
5. **Fee And Payment**
- 5.1 At HMG Guru's sole discretion the Fee shall be either:
 - (a) as indicated on invoices provided by HMG Guru to the Client in respect of Services provided; or
 - (b) HMG Guru's quoted Fee (subject to clauses 5.2 and 7.2 5.4) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days
- 5.2 HMG Guru reserves the right to vary the Fee in the event of a variation to HMG Guru's quotation;
 - (a) if the Client requests changes after commencement of the Services originally scheduled (including any applicable plans or specifications);
 - (b) if a variation to the Goods which are to be supplied is requested (including where due to inaccuracies in 8. quantities or dimensions or other information supplied to 8.1 HMG Guru for quotation purposes); or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, 8.2 but not limited to, in accordance with clause 15.5, obscured/lanted site defects; hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, discovery of asbestos etc) which are 9. only discovered on commencement of the Services etc.; 9.1 or
 - (d) as a result of an increase in HMG Guru's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services, or due to relevant industry awards (e.g. site allowance and severance pay), which are outside the control of Guru Projects.
- 9.2 All variations shall be in Writing, detailing the reason for the variation, the impact on the Fee, term and/or the scope of the Agreement and shall be signed by both parties. Payment for all variations must be made in full at the time of their completion.
- 9.3 The Client agrees to indemnify HMG Guru for all costs and 10.1 expenses (including, but not limited to, disbursements, postage, search fees, couriers and the like expenses), incurred by HMG Guru in connection with the provision of the Services. HMG Guru shall fully document all such expenses for submission to the Client.
- 9.4 At HMG Guru's sole discretion, a non-refundable deposit may be required.
- 9.5 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by HMG Guru, which may be:
 - (a) on or before delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance 11.1 with HMG Guru's payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by HMG Guru.
- 9.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction) or by any other method as agreed to between the Client and HMG Guru.
- 9.7 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by HMG Guru nor to withhold payment of any invoice because part of that invoice is in dispute.
- 9.8 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Client must pay to HMG Guru an amount equal to any GST HMG Guru must pay for any provision of Services by HMG Guru under this or any other Agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the 11.2 same basis as the Client pays the Fee. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Fee, except where they are expressly included in the Fee.
- 9.9 Receipt by HMG Guru of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then HMG Guru's ownership or rights in respect of the Services, and this Agreement, shall continue.
10. **Extension of Contract Period**
- 10.1 HMG Guru shall as per clause 5.2 above be entitled to claim an extension to the term of the Project in the event of delays resulting from any matter whatsoever which is not entirely under the control of HMG Guru. These matters 12.1 shall include, but are not limited to delays caused by:
 - (a) response(s) to information request(s) made by HMG Guru to the Client not being available when required;
 - (b) approval authorities response times for requests for preliminary decisions/information;
 - (c) information from Consultants, councils or referral agencies not being available when required;
 - (d) changes to the design brief being requested by the Client;
 - (e) time taken by the approval authority for the granting of required approvals;
 - (f) make a selection; or
 - (g) have the site ready for the Services; or
 - (h) notify HMG Guru that the Site is ready; or
 - (i) where (in the reasonable opinion of HMG Guru) the Site poses a safety risk for all parties (including, but not limited to, poor weather conditions, or the discovery of asbestos);
 - (j) any other variation to this Agreement.
- 10.2 In the event that there is a break in the continuity of Services 12.2 being provided by HMG Guru due to the Client's instructions or lack of instruction and such instructions are not received within thirty (30) calendar days of being requested by HMG Guru, or from the last Client instruction, or all Services are suspended by HMG Guru pursuant to overdue payments, then Fees for Services completed at the time of such a break or suspension shall be:
 - (a) the percentage due for completed Services of the current stage plus the cost of all Project staff working at the time of such a break or suspension of the Services for one (1) 12.3 month, all Fees due up to date of such a break or suspension plus all Fees, wages and expenses reasonably incurred as a result of such a break or suspension, unless otherwise agreed; and
 - (b) if the Project recommences, in addition to the amounts payable previously, the Client shall pay a commencement Fee to HMG Guru. The Fee shall be equivalent to the time charge cost for five (5) days of all Project staff required to be working on the Project at the time of such a break or suspension of Services, unless otherwise agreed.
11. **HMG Guru's Right to suspend supply of Services**
- 11.1 Without prejudice to any other remedies HMG Guru may have, if at any time the Client is in breach of any obligation (including those relating to payment) HMG Guru may suspend or terminate the supply of Services to the Client.
- 11.2 If HMG Guru exercises the above right to suspend the 13. Services, it will not be in breach of contract, and will not be liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client, and will be entitled to an extension of time to complete the contract; and shall keep its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid.
12. **Practical Completion**
- 12.1 Practical completion shall be the date which shall be the date of issue of the Occupation Certificate or the occupation of the premises by the Client whichever shall first occur.
- 12.2 The Client may with written consent of HMG Guru take 13.4 possession of the premises in which the Services are being carried out prior to the date of practical completion provided, however, in this event the Client shall not obstruct or prevent HMG Guru from proceeding with the Services to practical completion.
13. **Compliance with laws**
- 13.1 The Client and HMG Guru agree that both parties shall 14.1 comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the provision of Services by HMG Guru, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 13.2 The Client shall obtain (at the expense of the Client) all licences and approvals that may be required to enable Guru Projects to provide the Services.
14. **Provision of Services**
- 14.1 Any time specified by HMG Guru for provision of the 14.4 Services is an estimate only and HMG Guru will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. 14.5 In the event that HMG Guru is unable to provide the Services as agreed solely due to any action or inaction of the Client then HMG Guru shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date and the Client shall be liable for those costs.
15. **Nominated Consultants**
- 15.1 HMG Guru shall engage Consultants as specified in the quotation acting solely as agent on behalf of the Client and the following shall apply:
 - (a) HMG Guru shall be entitled to enter into contracts with such Consultants in the name of the Client; and
 - (b) the Client shall be responsible for all payments to such Consultants; and
 - (c) where HMG Guru pays the Consultant's account on behalf of the Client, the Client shall reimburse Guru Projects for the payment of the Consultant's account together with an account-handling fee within fourteen (14) days from the date of submission of the account by HMG Guru to the Client; and
 - (d) if the Client does not reimburse HMG Guru within fourteen (14) days from the date of submission of the account in accordance with subparagraph (c) above, HMG Guru shall be entitled to:
 - (i) charge interest at the Interest Rate from the date of payment of the Consultant's account by Guru Projects to the date of reimbursement to HMG Guru by the Client; and/or
 - (ii) charge an administration fee as allowed by this Agreement.
- 15.2 HMG Guru does not warrant the accuracy or quality of the Consultant's work or warrant that the recommendations of the Consultant are appropriate or adequate or are fit for their purpose or that they are not given negligently. The Client agrees that they shall not make any demand on HMG Guru or commence any legal proceedings against HMG Guru and HMG Guru shall have no liability, whether in negligence or otherwise, to the Client in relation to any work 15.6 performed by the Consultant.
- 15.3 At the option of the Client and notified to HMG Guru in Writing, the Client shall engage relevant Consultants required for the Project (after consultation with HMG Guru) and shall be liable for all payments to such Consultants.
16. **Risk**
- 16.1 If HMG Guru retains ownership of the Goods under clause 17 then:
 - (a) where HMG Guru is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either;
 - (i) the Client or the Client's nominated carrier takes possession of the Goods at HMG Guru's address; or
 - (ii) the Goods are delivered by HMG Guru or HMG Guru's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where HMG Guru is to both supply and install Goods then HMG Guru shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 16.2 The Client acknowledges that Goods (including but not limited to paint, timber, granite, tiles & concrete) supplied may (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, 17. cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.
- 16.3 While every effort will be taken by HMG Guru to match colour or grain of product, HMG Guru will take no responsibility for any variation of grain of timber, granite and other natural products between sale samples and the final product.
- 16.4 Timber is a hyrosopic material subject to expansion and contraction and therefore HMG Guru will accept no 17.2 responsibility for gaps that may appear during prolonged dry periods.
- 16.5 Where HMG Guru is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and HMG Guru shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
17. **Dimensions, Plans and Specifications**
- 17.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless HMG Guru and the Client agree otherwise in writing.
- 17.2 HMG Guru shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 17.3 If the giving of an estimate or quotation for the supply of Goods involves HMG Guru estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of HMG Guru's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 17.4 Should the Client require any changes to HMG Guru's 18.1 In this estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
18. **Personal Property Securities Act 2009 ("PPSA")**
- 18.1 clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 18.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
 - (a) all Goods and/or collateral (account), all Documentation previously supplied, and that will be supplied in the future, by HMG Guru to the Client;
 - (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing HMG Guru accepts that it shall be appointed and shall be entitled to act as the Client's agent for the purposes of the Project for the term of this Agreement.
 - HMG Guru represents that HMG Guru and its directors maintain current registration and licences in respect of the Services to be provided and maintains a current professional indemnity and public liability insurances.
 - The Client shall instruct HMG Guru to change the scope of the Services, HMG Guru shall promptly notify the Client in Writing of any variation in Fees pursuant to clause 5.2 of this Agreement. The Client agrees that additional fees may be payable.
 - HMG Guru shall keep full records of the Services provided in the manner determined by HMG Guru, and shall provide to the Client with updates with respect of the Services at the time and in the manner determined by HMG Guru in HMG Guru's absolute discretion.
15. **Client's Obligations**
- 15.1 The Client appoints HMG Guru as its agent for the purposes of the Project for the term of this Agreement.
- 15.2 The Client shall provide to HMG Guru all documentation and other information as and when requested. The Client acknowledges that the ability of HMG Guru to provide the Services is dependent upon the Client complying with this clause.
- 15.3 The Client acknowledges that if their requirements change during the term of the Agreement, the Fee may be subject to change.
- 15.4 The Client warrants that the site of the Project complies with all relevant laws and regulations and undertakes to appoint consultants to identify, handle and/or remove any hazardous (asbestos) or toxic materials or substances which may be located on the site of the Project, prior to the commencement of this Agreement. Under no circumstances will HMG Guru handle removal of asbestos products.
- 15.5 Prior to HMG Guru commencing the Services the Client must advise HMG Guru of the precise location of all services on the Site and clearly mark the same. The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be located on the site. Whilst HMG Guru will take all care to avoid damage to any underground services, the Client agrees to indemnify HMG Guru in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause 15.5.
- 15.6 It is the intention of HMG Guru, and agreed by the Client, that it is the responsibility of the Client to:
 - (a) ensure that HMG Guru has clear and free access to the Site at the agreed date/s and time/s to enable Guru Projects to undertake the Services. HMG Guru shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to HMG Guru's negligence;
 - (b) provide HMG Guru with facilities, as specified by HMG Guru (including, but not limited to, a suitable free power source) for the duration of the Services.
16. **Services supplied by the Client**
- 16.1 In the event that the Client undertakes or employs any third party to undertake any works in relation to the Project whilst HMG Guru is undertaking works then the Client must ensure that the Client and/or any third party so employed:
 - (a) are appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by HMG Guru;
 - (b) do not interfere with the progress of works by HMG Guru;
 - (c) hold all relevant insurances as HMG Guru is required to hold or are otherwise required under this contract;
 - (d) co-operate will all requests or directives of HMG Guru in relation to the times and co-ordination of works to be performed;
 - (e) co-operate as may be reasonably expected with all other persons on the worksite;
 - (f) discuss any worksite issues directly with HMG Guru and not with any of HMG Guru's employees.
17. **Title**
- 17.1 HMG Guru and the Client agree that the Client's obligations to HMG Guru for the provision the Services shall not cease (and ownership of any Documentation/Goods shall not pass) until:
 - (a) the Client has paid HMG Guru all amounts owing to HMG Guru; and
 - (b) the Client has met all other obligations due by the Client to HMG Guru in respect of all contracts between Guru Projects and the Client.
- 17.2 It is further agreed that, until ownership of the Documentation/Goods passes to the Client in accordance with clause 17.1:
 - (a) the Client is only a bailee of the Documentation/Goods and must return the Documentation/Goods to HMG Guru on request.
 - (b) the Client holds the benefit of the Client's insurance of the Documentation/Goods on trust for HMG Guru and must pay to HMG Guru the proceeds of any insurance in the event of the Documentation/Goods being lost, damaged or destroyed. The production of these terms and conditions by HMG Guru shall be sufficient evidence of HMG Guru's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with HMG Guru to make further enquiries.
 - (c) the Client irrevocably authorises HMG Guru to enter any premises where HMG Guru believes the Documentation/Goods are kept and recover possession of the Documentation/Goods.
 - (d) HMG Guru may commence proceedings to recover the Fee notwithstanding that ownership of the Documentation/Goods has not passed to the Client.

PLEASE NOTE: A larger print version of these terms and conditions is available from Guru Projects on request.

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- repayment of all monetary obligations of the Client to HMG Guru for Services – that have previously been provided and that will be provided in the future by HMG Guru to the Client.
- 18.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HMG Guru may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 18.2(a)(i) or 18.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, HMG Guru for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of HMG Guru;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of HMG Guru;
 - (e) immediately advise HMG Guru of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 18.4 HMG Guru and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 18.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 18.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 18.7 Unless otherwise agreed to in Writing by HMG Guru, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 18.8 The Client must unconditionally ratify any actions taken by HMG Guru under clauses 18.2 to 18.5.
- 18.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
19. **Security and Charge**
- 19.1 In consideration of HMG Guru agreeing to provide Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 19.2 The Client indemnifies HMG Guru from and against all HMG Guru costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HMG Guru rights under this clause.
- 19.3 The Client irrevocably appoints HMG Guru and each director of HMG Guru as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 19 including, but not limited to, signing any document on the Client's behalf.
20. **Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 20.1 The Client must inspect HMG Guru Services on completion (and Goods on delivery) and must within fourteen (14) days notify HMG Guru in Writing of any evident defect, error or omission, in the Services provided (including HMG Guru workmanship) or of any other failure by HMG Guru to comply with the description of, or quotation for, the Services which HMG Guru was to provide. The Client must notify any other alleged defect in HMG Guru Services as soon as is reasonably possible after such defect becomes evident. Upon such notification the Client must allow HMG Guru to review the Services that were provided.
- 20.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 20.3 HMG Guru acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 20.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, HMG Guru makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. HMG Guru liability in respect of these warranties is limited to the fullest extent permitted by law.
- 20.5 If the Client is a consumer within the meaning of the CCA, HMG Guru liability is limited to the extent permitted by section 64A of Schedule 2.
- 20.6 If HMG Guru is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then HMG Guru may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 20.7 If the Client is not a consumer within the meaning of the CCA, HMG Guru liability for any defective Services is:
- (a) limited to the value of any express warranty, or warranty card, provided to the Client by HMG Guru in HMG Guru's sole discretion;
 - (b) otherwise negated absolutely.
- 20.8 Subject to this clause 20, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 20.1; and
 - (b) HMG Guru has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 20.9 Notwithstanding clauses 20.1 to 20.8 but subject to the CCA, HMG Guru shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by HMG Guru;
 - (e) fair wear and tear, any accident, or act of God.
- 20.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by HMG Guru as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that HMG Guru has 24.2 agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 20.10.
- 20.11 HMG Guru may in its absolute discretion accept non-defective Goods for return in which case HMG Guru may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 20.12 Notwithstanding anything contained in this clause if Guru Projects is required by a law to accept a return then HMG Guru will only accept a return on the conditions imposed by that law.
21. **Intellectual Property**
- Where HMG Guru has designed, drawn or written, or created any Documentation for the Client, then the copyright in those designs, drawings and Documentation (either in whole or in part) shall remain vested in HMG Guru, and shall only be used by the Client at HMG Guru's discretion. However, HMG Guru grants the Client a licence to use the Documentation to produce the Client's Project, for which they were intended, conditional upon all of the following:
- (a) the licence applies only to one individual site (or to that part of the site) to which the Documentation relates.
 - (b) the Fee properly due to HMG Guru has been paid.
- 21.3 The Client acknowledges that if they wish to reproduce the Project at another site then a further Fee will be due and payable to HMG Guru. Upon payment of that Fee HMG Guru shall grant a further licence to use the Documentation to produce the Client's Project but this shall only be applicable to that particular site.
- 21.4 Any licence granted shall immediately be withdrawn if payment of the Fee is not made on due date and any designs, drawings and Documentation (including copies) must be immediately returned to HMG Guru by the Client.
- 21.5 Designs, drawings or sketches, furnished by HMG Guru, dummies, models or the like devices made or manipulated by HMG Guru or made from HMG Guru original design, or from a design furnished by the Client, remain the exclusive property of HMG Guru unless otherwise agreed upon in Writing. They shall not be used for any purpose other than that nominated by HMG Guru and no ideas obtained therefrom may be used without the consent of HMG Guru. HMG Guru shall be entitled to compensation from the Client for any unauthorised use of such items.
- 21.6 Where the Client provides HMG Guru any materials including sketches, photographs, drawings, plans or concepts upon which HMG Guru is to base the Services, the Client shall indemnify and keep indemnified HMG Guru at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against HMG Guru or incurred or become payable by HMG Guru resulting or arising from any claim or infringement of any patent, registered design, trademark, copyright or any other property interest of a third party which may result out of the use by HMG Guru of those materials.
- 21.7 HMG Guru shall retain the original designs, including but not limited to, any CAD drawings and/or designs. The Client is entitled to one set of designs as a record of the Services provided and shall be issued with one (1) master set of PDF files, additional sets or individual prints for any stage of the Project shall be charged at market rates unless otherwise agreed.
- 21.8 The Client acknowledges that they may only supply the documents and drawings (including softcopy) to any third party with the express approval of HMG Guru in Writing. HMG Guru may photograph, video or record by any and all means the Project during construction and upon completion for HMG Guru's own use and for use in exhibitions, or award competitions, or publication in journals.
- 21.9 If the Client publishes or permits the publication of the Project HMG Guru must be given full credit for its role in the Project. HMG Guru's details shall be included on any or all Project signboards. If there is no such signboard, then the Client agrees that HMG Guru may erect a signboard in an agreed location for the duration of the Project and up to thirty (30) days after practical completion of the Project.
22. **Confidentiality**
- Each party agrees to treat all information and ideas communicated by the other party as confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 22.2 The quotation, and the information contained in the quotation, provided by HMG Guru to the Client is done so on a "commercial in confidence" basis whereby, the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of HMG Guru.
23. **Default and Consequences of Default**
- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate fourteen percent (14%) per year calculated daily (and at HMG Guru's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. If the Client owes HMG Guru any money the Client shall indemnify HMG Guru from and against all costs and disbursements incurred by HMG Guru in recovering the 27.1 debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HMG Guru contract default fee, and bank dishonour fees).
- 23.2 Without prejudice to HMG Guru's other remedies at law HMG Guru shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HMG Guru shall, whether or not due for payment, 27.2 become immediately payable if:
- (a) any money payable to HMG Guru becomes overdue, or in HMG Guru's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by HMG Guru;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
24. **Cancellation**
- 24.1 HMG Guru may cancel any contract to which these terms and conditions apply or cancel provision of Services at any time before the Services are delivered by giving seven (7) day's written notice to the Client. On giving such notice HMG Guru shall repay to the Client any sums paid in respect of the Fee for Services which have not yet been performed by HMG Guru, and HMG Guru shall not be liable for any losses or damages (howsoever arising) from such cancellation.
- 24.2 In the event that the Client cancels provision of the Services, seven (7) days written notice must be provided. The Client 28.2 shall be liable for any and all loss incurred (whether direct or indirect) by HMG Guru as a direct result of the cancellation (including, but not limited to, any loss of profits).
25. **Privacy Act 1988**
- The Client agrees for HMG Guru to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by HMG Guru.
- 25.2 The Client agrees that HMG Guru may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 25.3 The Client consents to HMG Guru being given a consumer 30.1 credit report to collect overdue payment on commercial credit.
- 25.4 The Client agrees that personal credit information provided may be used and retained by HMG Guru for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 25.5 HMG Guru may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 25.6 The information given to the CRB may include:
- (a) personal information as outlined in 25.1 above;
 - (b) name of the credit provider and that HMG Guru is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and HMG Guru has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of HMG Guru, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 25.7 The Client shall have the right to request (by e-mail) from HMG Guru:
- (a) a copy of the information about the Client retained by HMG Guru and the right to request that HMG Guru correct any incorrect information; and
 - (b) that HMG Guru does not disclose any personal information about the Client for the purpose of direct marketing.
- 25.8 HMG Guru will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 25.9 The Client can make a privacy complaint by contacting Guru Projects via e-mail. HMG Guru will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
26. **Building and Construction Industry Security of Payment Act 1999**
- At HMG Guru's sole discretion, if there are any disputes or claims for unpaid Goods & Services then the provisions of the Building and Construction Industry Security of Payment Act 1999 may apply.
- 26.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
27. **Liability Limitations**
- Except as is specified in clause 20, the liability limitations of HMG Guru, its partners, associates, and employees shall at no time exceed the amount of Professional Indemnity insurance cover carried by HMG Guru, (alternatively Guru Projects liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Services).
- 27.2 The Client agrees to indemnify HMG Guru, its partners, associates, employees and any other person who may be sought to be made liable in excess of the limit of liability described in clause 27.1 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by HMG Guru.
28. **Dispute Resolution**
- 28.1 If a dispute arises between the parties to this Agreement then either party shall send to the other party a notice of dispute in Writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in Writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 28.2 Nothing in this Agreement shall require the either party to proceed with arbitration pursuant to clause 28.1 in the event the dispute is not resolved at mediation and either party, at their option, commence proceedings.
29. **Unpaid Seller's Rights**
- Where the Client has left any item with HMG Guru for repair, modification, exchange or for HMG Guru to perform any other service in relation to the item and HMG Guru has not received or been tendered the whole of any monies owing to it by the Client, HMG Guru shall have, until all monies owing to HMG Guru are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 29.2 The lien of HMG Guru shall continue despite the commencement of proceedings, or judgment for any monies owing to HMG Guru having been obtained against the Client.
30. **Service of Notices**
- Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 30.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
31. **Trusts**
- 31.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not HMG Guru may have notice of the Trust, the Client covenants with HMG Guru as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of HMG Guru (HMG Guru will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
32. **General**
- Each party will perform such further acts and execute and deliver all such further documents or instruments as are or become necessary to give effect to the terms of this Agreement.
- 32.2 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them. The rights, powers or remedies provided in this Agreement are cumulative and not exclusive of the rights, powers, remedies provided by law independently of this Agreement.
- 32.3 If any provision of this Agreement is invalid, illegal, unlawful or otherwise incapable of being enforced, all other provisions of this Agreement shall nevertheless remain in full force and effect and be valid and fully enforceable and no other provision of this Agreement shall be construed to be dependent upon any provision unless so expressed in this Agreement.
- 32.5 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 32.6 HMG Guru may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 32.7 The Client cannot licence or assign without the written approval of HMG Guru.
- 32.8 HMG Guru may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HMG Guru's sub-contractors without the authority of HMG Guru.
- 32.9 The Client agrees that HMG Guru may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for HMG Guru to provide Goods and/or Services to the Client.
- 32.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 32.11 This Agreement constitutes the entire Agreement between the parties with respect of the subject matter and contains all of the representations, undertakings, warranties, covenants and Agreements of the parties. This Agreement supersedes all prior negotiations, contracts, arrangements, understandings and Agreements with respect to such subject matter. There are no representations, undertakings, warranties, covenants or Agreements between the parties express or implied except as contained in this Agreement.

PLEASE NOTE: A larger print version of these terms and conditions is available from Guru Projects on request.

Annexure 1

"HMG Guru" means HMG Guru group of companies which consist of the following companies:

Hospitality Management Group Pty Ltd
Guru Projects Pty Ltd
Guru Management Pty Ltd
Guru Studio Pty Ltd
Made by Workshop Pty Ltd
Guru Capital Pty Ltd