

Standard Terms and Conditions

1. Application of Standard Terms

- a. The Quotation:
 - i. forms part of these Standard Terms; and
 - ii. is to be read in conjunction with these Standard Terms.
- b. All Works carried out are subject to these Standard Terms whether the Works were performed prior to this agreement or otherwise.
- c. These Standard Terms will operate to the exclusion of any terms or conditions proposed or put forward by the Customer, whether contained in the Customer's contract, purchase order, or otherwise.

2. Definition of Terms

- a. In the Contract:
 - i. **Act of Default** means the Customer:
 - 1) fails to pay the Contract Price (or any part thereof) in accordance with the Contract;
 - 2) breaches any Customer obligation or warranty;
 - 3) fails to provide Black Cat with information, instruction, direction, and/or documents in the manner required by the Contract;
 - 4) fails to obtain necessary approvals from any Authority;
 - 5) fails to provide Black Cat with clear and uninterrupted access to the Project Site which is necessary for Black Cat to carry out the Works (or any part thereof);
 - 6) engages any other person to carry out the Works (or any part thereof) without Black Cat's prior written consent;
 - 7) commits a breach of any law or any requirements of relevant Authority; and/or
 - 8) otherwise fails to carry out any of its obligations in the manner required by the Contract.
 - ii. **Authority** means any local government council, government department, agency, statutory or other authority or body that has any jurisdiction (whether national, state, territory or local) over the Works or any part thereof.
 - iii. **Black Cat** means Black Cat Commercial Roofing Pty Ltd, its successors and assigns, or any person acting on behalf of or with the authority of Black Cat.
 - iv. **Business Day** means any day in New South Wales other than:
 - 1) a Saturday;
 - 2) a Sunday;
 - 3) a public holiday; and/or
 - 4) the Christmas shutdown observed by the construction industry beginning on or about 22 December of each year until the second Friday of January of the following year.
 - v. **Consultant** means any and all of the Customer's employees, engineers, architects, consultants, and/or advisers.
 - vi. **Contract** means the written agreement between the Customer and Black Cat, constituted by:
 - 1) the Quotation; and
 - 2) these Standard Terms.
 - vii. **Contract Price** means the amount specified in the Quotation, as adjusted in accordance with the terms of the Contract.
 - viii. **Customer** means the person named in the Quotation.

- ix. **Defects List** means the list specifying defects in the Works that appear after the date of Practical Completion.
- x. **Design Document** means all design documentation (including drawings, plans, specifications, reports, samples, calculations, and other documents) in computer readable or written forms, or stored by any other means, which are required for the carrying out of the Works, or which the Customer (or any other person engaged by the Customer) prepared or produced (or will prepare or will produce) in relation to the Works.
- xi. **Due Date** means the due date for payment of Black Cat's claims for payment, as specified in the Quotation.
- xii. **Final Claim** means a claim for all remaining unpaid moneys payable by the Customer to Black Cat under the Contract as at the date of Practical Completion.
- xiii. **PPSA** means the *Personal Property Securities Act 2009* (Cwlth).
- xiv. **Practical Completion** means the time when the Works are complete except for minor omissions or defects that do not prevent the Works from being reasonably used for their usual purpose.
- xv. **Project Site** means the place where Works will be performed, as specified in the Quotation.
- xvi. **Quotation** means the quotation issued by Black Cat to the Customer which these Standard Terms form part of.
- xvii. **Standard Working Hours** means the hours of work observed by Black Cat on each Business Day, being 7:00 AM to 3:00 PM.
- xviii. **Up-Front Payment** means any money (as specified in the Quotation) required to be paid by the Customer to Black Cat prior to the commencement of the Works.
- xix. **Variation** means any omission, addition or change to the Works or in the manner of carrying out the Works, including without limitation:
 - 1) performance of additional work;
 - 2) Black Cat incurring additional costs;
 - 3) decreases in or removal from the Works; and/or
 - 4) changes in the positions, dimensions, levels, details, finish, quality, drawings, and/or specifications for the Works or any part of the Works.
- xx. **Work(s)** means the construction work carried out (or undertaken to be carried out) and/or the related goods and services supplied (or undertaken to be supplied) by Black Cat for the Customer as specified in the Contract.

3. **Black Cat's Responsibilities**

- a. Black Cat will carry out and complete the Works in accordance with the Contract. For the avoidance of doubt, the Works:
 - i. are limited to the works described in the Quotation and these Standard Terms; and
 - ii. exclude any work:
 - 1) that requires any design work, advice, responsibility, or obligation;
 - 2) not specifically included as part of the Works; and
 - 3) specially excluded from the Works under the Quotation and/or these Standard Terms.
- b. The Contract is a construct only contract for Black Cat. For the avoidance of doubt, Black Cat has no design obligations or responsibilities.

4. **Design Obligations and Warranties**

- a. The Customer bears the sole risk of any design and/or design element contained in any Design Document or intended to be incorporated into the Works.
- b. The Customer must:
 - i. prepare, review, or update any design, design element, or Design Document;
 - ii. ensure the (i) accuracy, (ii) completeness, (iii) lawfulness (including compliance with applicable law or requirements of Authorities), (iv) suitability, and (v) fitness of purpose of any design, design element, or Design Document; and
 - iii. provide Black Cat with true, accurate, complete, lawful, and suitable information, instruction, direction, and/or documents (including any design, design element, Design Document, feedback, response, approval, authority, consent, report, or advice) within the time and in the form required by Black Cat.
- c. To the maximum extent allowed by law, if Black Cat becomes liable or is alleged to be liable to any person in relation to any design, design element, or Design Document, the Customer indemnifies Black Cat, defends Black Cat, and holds Black Cat harmless against any and all claims, expenses, losses, damages (including consequential damages), penalties, and costs (including legal costs on an indemnity basis) in relation to such liability.
- d. The Customer warrants that:
 - i. it will prepare and/or it has prepared all design, design element, or Design Document with due skill and care and is and will be consistent with the intent and requirements of the Contract;
 - ii. the Customer will at all times be suitably qualified and experienced (or engage Consultants who will at all times be suitably qualified and experienced) and will exercise due skill, care, and diligence in the carrying out and completion of design obligations under the Contract;
 - iii. the design of the Works will be fully and professionally completed and documented without error, omission, ambiguity, lack of clarity, deficiency, or defect so that it is fit for purpose and complies with the provisions of the Contract, the requirements of any Authority, and relevant law; and
 - iv. the Customer will design the Works so that when the Works are constructed and completed, they shall be structurally and aesthetically sound and compliant with the Contract, the requirements of relevant Authority, and relevant law.

5. Customer's Obligations

- a. The Customer must:
 - i. carry out its obligations in the manner required by the Contract;
 - ii. in accordance with the terms of the Contract, pay Black Cat the Contract Price and all other moneys payable under the Contract;
 - iii. comply with all relevant law and the requirements of relevant Authority;
 - iv. protect the Project Site, including any prior work, services, and existing works on the Project Site;
 - v. obtain and maintain any approval, certificate, or other requirement required by any Authority and/or relevant law;
 - vi. engage Consultants who are appropriately qualified and licenced persons;
 - vii. co-ordinate, direct, and control the completion of any design, design element, or Design Documents required for the Works and provide

- such copies of the same to Black Cat as may be required and within the time required;
- viii. supply everything necessary for the proper performance of Black Cat's obligations and discharge of Black Cat's liabilities, including by providing Black Cat with:
- 1) access to the Project Site in accordance with the terms of the Contract; and
 - 2) true, accurate, complete, lawful, and suitable information, instruction, direction, and/or documents (including any design, design element, Design Document, feedback, response, approval, authority, consent, report, or advice) within the time and in the form required by Black Cat;
- ix. take all reasonable steps to ensure the Works are carried out without delay including by:
- 1) keeping Black Cat fully informed of any relevant facts, issues, events, or other circumstances that may affect the Works (or any part of the Works);
 - 2) communicating fully and regularly with Black Cat in relation to the Works (or any part of the Works), including meeting with Black Cat, any Authority, any Consultant, or any other person, when reasonably requested;
 - 3) promptly returning phone calls;
 - 4) coordinating, cooperating, and working with Black Cat, all Authorities, all Consultants, or any other person to ensure that the Works are carried out in a timely and expeditious manner; and
 - 5) not preventing, impeding, fettering, hindering, delaying, or disrupting the Works.

6. Customer's Warranties

- a. The Customer warrants:
- i. that the Customer:
 - 1) has obtained all necessary authorisations to allow the Customer to engage Black Cat under the Contract;
 - 2) has full power and authority to enter into the Contract and to perform its obligations;
 - 3) has obtained and will maintain any licence, approval, certificate, or other requirement required by any Authority and/or relevant law;
 - 4) has and will engage Consultants who are appropriately qualified and licenced persons, and that the Consultants will carry out their obligations with due skill and care to a standard expected of a reasonably competent professional;
 - 5) will take all reasonable steps to ensure the Works are carried out without delay; and
 - 6) has not relied upon any representations, agreements, or warranties from any person (including Black Cat) in entering into the Contract;
 - ii. the completeness, accuracy, lawfulness, and suitability of any and all information, instruction, direction, and/or documents provided by the Customer or any Consultant to Black Cat;
 - iii. that the Customer will not infringe any third-party rights (including intellectual property rights) in working with Black Cat or carrying out its obligations under the Contract; and

- iv. that the Customer will not rely upon any representation, comment, agreement, or warranty made by any party (including Black Cat) in relation to any work or service to be carried out by a Consultant. The Customer will rely on the Consultant for the Consultant's works and/or services.

7. Contract Documents

- a. If Black Cat or the Customer identifies any discrepancy or ambiguity in or between the Contract and the Design Documents, Black Cat or the Customer may notify the other party in writing and ask the Customer for instructions as to how to proceed. The Customer must instruct Black Cat in writing on how the discrepancy or ambiguity must be addressed within five (5) Business Days from receipt of Black Cat's notice.
- b. If Black Cat is required to carry out additional work, incurs increased costs, or incurs any damage, expense, loss, liability, or delay arising out of or in any way connected with any discrepancy or ambiguity in or between the Contract and the Design Documents, Black Cat may claim for such costs, damages, expenses, losses, liabilities, or losses as a Variation.

8. Approvals

- a. Notwithstanding any provision to the contrary, the Customer is responsible for the payment of any and all fees, charges, levies and costs of whatever nature, relevant to:
 - i. obtaining planning and building approvals for the Works;
 - ii. registrations relevant to title to the Project Site;
 - iii. inspections conducted by or for the principal certifying authority; and
 - iv. complying with any conditions of the development consent.
- b. The Customer will provide Black Cat with all:
 - i. approvals, authorisations, consents, and documents required for the Works; and
 - ii. access required for Black Cat to carry out the Works, including access to properties adjacent to or near the Project Site.

9. Construction Period

- a. Unless a date is specified in the Quotation, the construction period commencement date is the first day that Black Cat commenced the Works.
- b. Black Cat will achieve Practical Completion of the Works within the period specified in the Quotation.
- c. If no period is specified in the Quotation, Black Cat will achieve Practical Completion of the Works within a reasonable time.
- d. Except if no period is specified in the Quotation, if Black Cat does not achieve Practical Completion of the Works within the period specified in the Quotation, the Customer is entitled to liquidated damages in the amount specified in the Quotation after the construction period ends until the earlier of the date:
 - i. of Practical Completion; or
 - ii. the Contract is terminated.

10. Delays and Extensions of Time

- a. Black Cat is entitled to a reasonable extension of time to complete the Works if the Works are delayed by cause(s) beyond the sole control of Black Cat. Such cause(s) include without limitation:
 - i. a Variation;
 - ii. an Act of Default;
 - iii. pandemic, fire, explosion, earthquake, or act of God;
 - iv. the existence of abnormal climatic conditions (such as without limitation hail, snow, low temperature, high wind, severe dust storm, high temperature, or any combination thereof) because of which it is

- either not reasonable or safe for workers exposed thereto to continue working;
- v. inclement weather or the effect of inclement weather on access to or the safety of the Project Site or the ability to carry out the Works;
 - vi. Black Cat is prevented from carrying out the Works due to any reason beyond Black Cat's reasonable control;
 - vii. an industrial dispute;
 - viii. the occurrence of any event that impedes the use of machinery or equipment required to perform the Work (such as without limitation vehicular accidents or damaged machinery or equipment), provided such event is beyond the reasonable control of Black Cat;
 - ix. any act or omission by the Customer;
 - x. a visit from the local council, work health and safety regulator or other authority;
 - xi. delays in obtaining approvals;
 - xii. delays in the delivery of materials or equipment;
 - xiii. requirement of a survey or any other report;
 - xiv. latent conditions affecting the Project Site, the ability to carry out the Works or requiring additional work;
 - xv. instructions from the Customer to stop the Work;
 - xvi. the Christmas shutdown observed by the construction industry beginning on or about 22 December of each year; or
 - xvii. Black Cat suspending the Works in accordance with the Contract or law.
- b. Black Cat, within twenty (20) Business Days of reasonably becoming aware of both the cause and the extent of the delay, must give the Customer a written extension of time claim, outlining the:
 - i. cause of the delay; and
 - ii. number of days extension of time claimed.
 - c. If the Customer disagrees with Black Cat's extension of time claim, the Customer must, within five (5) Business Days of receiving Black Cat's extension of time claim, provide Black Cat with a notice in writing disputing the extension of time claimed and providing reasons and supporting evidence (to Black Cat's satisfaction) why the extension of time claimed is disputed.
 - d. For the avoidance of doubt, if the Customer does not provide Black Cat with a notice in writing disputing the extension of time claimed within the time and in the manner required by clause 10(c), the number of days extension of time claimed by Black Cat is deemed accepted and agreed to by the parties.
 - e. Any extension of time agreed to by the parties or extension of time deemed accepted and agreed in accordance with clause 10(d) extends the period for Black Cat to achieve Practical Completion of the Works.
 - f. Delay in notifying or a failure to notify a delay will not in itself prohibit an extension of time, provided that the matter which is claimed to cause delay is proven to cause delay to the Works.

11. Practical Completion

- a. Once Practical Completion is reached, Black Cat:
 - i. will give the Customer a notice of practical completion in writing; and
 - ii. is entitled to issue a Final Claim.
- b. If any defects exist at the Works at the time the Final Claim is issued, the value of the defects will be determined based on Black Cat's estimated cost to complete the defects. For the avoidance of doubt, the presence of such defects does not prevent Black Cat from issuing a Final Claim and such defects will be rectified within the defects liability period.

- c. The Customer must meet with Black Cat at the Project Site at a date and time agreed between the parties for the Customer to conduct inspection of the Works.
- d. Following an inspection of the Works in accordance with clause 11(c) or if the Customer fails to attend the agreed inspection date, the Customer must pay the Final Claim on or by the Due Date.
- e. Unless otherwise specified in the Quotation, Black Cat is not required to obtain any certificate of occupancy or final inspection certificate for the Works.
- f. Black Cat is not required to provide the Customer with any keys, certificates, approvals, manuals, deeds of warranty, or other documents which are essential for the use, operation, and maintenance of the Works or the Property until the Customer has paid the Final Claim in full.
- g. The Final Claim must be paid in full prior to Black Cat handing over the Works to the Customer. Black Cat will, within ten (10) Business Days from receipt of the full payment of the Final Claim, provide the Customer with keys, certificates, approvals, manuals, deeds of warranty, or other documents required under the Contract which are essential for the use, operation, and maintenance of the Works or the Property.

12. Site Access

- a. The Customer must:
 - i. provide Black Cat with clear and adequate access to the Project Site; and
 - ii. at the Customer's cost, obtain and maintain any easement, written approval, or other permission from owners of properties adjacent to or near the Project Site, to access such adjacent or nearby property when necessary to carry out the Works (or any part thereof).
- b. The Customer warrants that:
 - i. it has thoroughly inspected, investigated, and protected the Project Site, including any prior work, services, and existing works on the Project Site; and
 - ii. the Project Site is suitable for the carrying out of the Works under the Contract.
- c. To the maximum extent allowed by law, if Black Cat becomes liable or is alleged to be liable to any person in relation to the Project Site (including in relation to any work, materials, equipment, tools, goods, or any other property at the Project Site), the
- d. Customer indemnifies Black Cat, defends Black Cat, and holds Black Cat harmless against any and all claims, expenses, losses, damages (including consequential damages), penalties, and costs (including legal costs on an indemnity basis) in relation to such liability.
- e. The Customer must not:
 - i. hinder Black Cat's access to the Project Site;
 - ii. disrupt Black Cat's performance of the Works; and/or
 - iii. directly issue directions or instructions to Black Cat's workers, suppliers, or subcontractors.

13. Up-Front Payment

- a. Black Cat may, if specified in the Quotation, claim for the Up-Front Payment.
- b. The Customer must pay the Up-Front Payment prior to the commencement of the Works. For the avoidance of doubt, Black Cat is not obligated to commence the carrying out of the Works (or any part thereof) until the Up-Front Payment is paid.
- c. The Up-Front Payment is not a deposit or a payment on account and will not be applied against any other payment due or payable under the Contract. For the avoidance of doubt, the Up-Front Payment:
 - i. forms part of the Contract Price; and

- ii. is applied to pre-contract work or service carried out by Black Cat prior to the acceptance of the Quotation and/or these Standard Terms.

14. Progress Payments

- a. The Customer must progressively pay Black Cat the Contract Price and other money(s) that become due and payable to Black Cat under the Contract.
- b. Black Cat may send to the Customer a written claim for a progress payment:
 - i. prior to the commencement of the Works, for any Up-Front Payment;
 - ii. on the Friday of each calendar week;
 - iii. on or from the days/dates specified in the Quotation; and
 - iv. for a period of twenty-four (24) calendar months after completion of the Works or termination of the Contract.
- c. The progress payment will specify:
 - i. the amount claimed for Works completed as at the date of the written claim for progress payment;
 - ii. the value and brief description of any Variations which are included in the progress payment;
 - iii. other moneys payable or likely to be payable under the provisions of the Contract;
 - iv. the amount(s) previously paid by the Customer;
 - v. the amount claimed by Black Cat, being the sum of the amounts in clause 14(c)(i), (ii), and (iii) less the value of clause 14(c)(iv); and
 - vi. any other amount(s) Black Cat is entitled to claim payment for in accordance with the terms and conditions of the Contract or law, including without limitation a claim for damages or interest.
- d. The Customer must serve a payment schedule within two (2) Business Days from receiving a claim for progress payment.
- e. The Customer must pay Black Cat a progress payment by the Due Date.
- f. If the Customer fails to pay any or part of any progress payment by the Due Date, Black Cat is entitled to interest on the overdue amount at the higher of:
 - i. four (4) percent above the Reserve Bank of Australia Prime Indicator Lending Rate for the previous month; or
 - ii. the rate of interest specified in the Quotation.
- g. The Customer has no entitlement to withhold or set-off any monies purportedly due or owing by Black Cat to the Customer from any moneys due or payable by the Customer to Black Cat, whether in damages or otherwise, arising under the Contract, any other agreement, or at law.
- h. Black Cat will issue to the Customer a tax invoice within twenty-eight (28) days after the Customer requests a tax invoice. The twenty-eight (28) day period commences at the earlier of:
 - i. Black Cat receiving payment from the Customer for the invoice amount; or
 - ii. the Customer serving on Black Cat a certificate from a qualified and approved quantity surveyor approving payment of a progress payment.
- i. Payment of the Contract Price is acceptance by the Customer that the Works have been completed satisfactorily. For the avoidance of doubt, payments under the Contract are not on account. To the maximum extent allowed by law, all payments made are for construction works completed and/or related goods and/or services supplied pursuant to the Contract.

15. Security

- a. The Customer has no entitlement to any security under the Contract from Black Cat or any of its employees or representatives for the Project Site, the

Works, and/or otherwise, whether in the form of cash retention, bank guarantees, personal guarantees, or otherwise.

16. Variations

- a. A Variation may arise due to without limitation:
 - i. instructions, directions, or requests from the Customer, an Authority, or any third party;
 - ii. any discrepancy or ambiguity in or between the Contract and the Design Documents;
 - iii. latent conditions affecting the Project Site, affecting the ability to carry out the Works, or requiring additional work;
 - iv. demobilisation, mobilisation, and other costs associated with Black Cat suspending and recommencing the Works in accordance with the Contract or at law;
 - v. the issuance of any new design, design element, drawings, or other documents that affect the Works;
 - vi. any amendment or issuance of a new law or requirement of any Authority;
 - vii. the preparation by Black Cat of any reports, investigations, or documents or the engagement of any professional services or expert witnesses for or in relation to the Works and/or as required by law or any Authority; and/or
 - viii. any requirement for Black Cat to carry out any Work outside the Standard Working Hours or during any day other than a Business Day.
- b. If a Variation arises and Black Cat is willing and agrees to carry out the Variation, then Black Cat may, at Black Cat's discretion:
 - i. issue to the Customer a quotation for a proposed Variation for the Customer's agreement; or
 - ii. proceed with the Variation and charge:
 - 1) an administration fee of \$250.00 for each Variation;
 - 2) time spent by Black Cat in performing the Variation, as evidenced by the timesheets and other records, calculated at the rates specified in the Schedule of Rates in the Quotation;
 - 3) Black Cat's margin specified in the Quotation; and
 - 4) any costs possibly incurred by Black Cat, including for engaging subcontractor(s) and/or supplier(s).
- c. At Black Cat's discretion, Black Cat may refuse to carry out any Variation. In such circumstances, the Customer may engage others to carry out the Variation at its own risk and account.
- d. Black Cat is not obligated to:
 - i. carry out any Variation unless Black Cat consents. For the avoidance of doubt, Black Cat may, at its sole and unfettered discretion, refuse any work that is Variation work; and
 - ii. commence the Variation works until the Customer agrees to the Variation in writing. For the purpose of this clause, an agreement in writing may be made electronically including by email, text message, or other electronic means.
- e. The construction period specified in the Quotation is automatically extended by the time required by Black Cat to carry out the Variation, as notified by Black Cat.
- f. Variations are subject to the terms and conditions of the Contract.

17. Transfer of Title

- a. To the maximum extent allowed by law, title to the Works remains with Black Cat until the full payment of the Contract Price is made by the Customer to

Black Cat. Until title to the Works passes to the Customer, Black Cat has full authority to retake, sell or otherwise dispose of the Works.

- b. Irrespective of whether title the Works remains vested in Black Cat, risks in the Works passes to the Customer upon delivery of the materials or installation of the Works at the Project Site.

18. PPSA

- a. Until the full payment by the Customer to Black Cat of all moneys payable under the Contract, Black Cat has security interest over the Works. For the purpose of this clause, security interest has the same meaning as under the PPSA.
- b. The Customer agrees to do anything (including without limitation obtaining consents, signing, and producing documents, obtaining signatures and documents, and supplying information) which Black Cat asks and considers necessary for:
 - i. ensuring that Black Cat's security interest is enforceable, perfected, and otherwise effective;
 - ii. enabling Black Cat to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
 - iii. enabling Black Cat to exercise rights in connection with the security interest.
- c. The Customer must not:
 - i. create any security interest or lien over any of Black Cat 's property whatsoever;
 - ii. give possession of Black Cat's property to another person except where Black Cat expressly authorises in writing to do so; and
 - iii. permit any of Black Cat's property to become an accession to or commingled with any asset that is not part of the Works.
- d. Everything the Customer is required to do under this clause is at the Customer's sole expense.

19. Charge on Project Site

- a. The Customer authorises Black Cat to charge the Project Site to secure the Customer's obligations to Black Cat under the Contract.
- b. Black Cat's entitlement to effect and maintain the charge over the Project Site expires upon the Customer discharging all of its obligations to Black Cat under the Contract to the satisfaction of Black Cat.

20. Defects Liability

- a. Unless there is a period specified in the Quotation, the parties have not contracted to allow for any defects liability period.
- b. The defects liability period commences on the date of Practical Completion.
- c. The Customer may, before the expiration of the defects liability period, give Black Cat a Defects List.
 - i. The Defects List must be independently verified by a qualified quantity surveyor or equivalent professional.
 - ii. The Defects List must be supported, at the minimum, by the following information:
 - 1) the exact location of the alleged defect;
 - 2) a statement of how the alleged defect occurred and confirmation that the defect was not caused or contributed to by the Customer; and
 - 3) at least one (1) picture of the alleged defect.
- d. Black Cat will rectify defects in the Works that are:

- i. Black Cat's responsibility; and
- ii. notified to Black Cat in accordance with clause 20(c).

21. Warranties

- a. To the maximum extent allowed by law, Black Cat's warranties over the Works is limited to statutory warranties only.

22. Insurances

- a. Black Cat will obtain and maintain such insurance policies as Black Cat deems necessary for the performance of the Works.

23. Suspension

- a. If the Customer commits an Act of Default, Black Cat may suspend the carrying out of the Works immediately upon Black Cat providing written notice to the Customer of the suspension.
- b. Black Cat will recommence performance of the Works within ten (10) Business Days of the Customer remedying its Act of Default to the satisfaction of Black Cat.
- c. Black Cat is not liable to the Customer (or any other person) for any damage, cost, liability, or expense resulting from Black Cat exercising its right to suspend the carrying out of the Works under clause 23(a) of these Standard Terms. The Customer holds Black Cat harmless from any and all damage, cost, liability, or expense it incurs from Black Cat exercising its right to suspend the carrying out of the Works under clause 23(a) of these Standard Terms.
- d. Black Cat's rights to suspend the carrying out of the Works under clause 23(a) of these Standard Terms are cumulative and not exclusive of any rights or remedies provided by law.

Termination

- e. If the Customer does not remedy the Act of Default (to the satisfaction of Black Cat) within ten (10) Business Days of receiving a suspension notice under clause (a) of these Standard Terms or if the Act of Default cannot be remedied, Black Cat may terminate the Contract by providing the Customer notice in writing.
- f. If Black Cat terminates the Contract in accordance with clause 0(e) of these Standard Terms, the Customer will pay Black Cat for (i) completed Works and Variations, and (ii) any other moneys owing under the Contract up to the date of termination.
- g. The termination of the Contract clause 0(e) of these Standard Terms does not limit any other rights and remedies available to Black Cat at law or under the other terms of the Contract, including a claim for damages.

24. Termination for Convenience

- a. Black Cat may terminate the Contract for convenience and without cause by giving the Customer at least ten (10) Business Days' written notice.
- b. If Black Cat terminates the Contract under this clause:
 - i. the Customer will pay Black Cat for (i) completed Works and Variations, and (ii) any other moneys owing under the Contract up to the date of termination;
 - ii. Black Cat has no liability to the Customer whether for consequential loss, damages, costs, or otherwise arising from the termination; and
 - iii. the Customer holds Black Cat harmless from any and all damage, cost, liability, or expense it incurs from Black Cat applying its rights under this clause.

25. Disputes

- a. If any dispute or difference concerning the Contract or the Works arises between the parties, then the party saying there is a dispute will give the other party a written notice of the dispute.

- b. Within five (5) Business Days of giving a written notice of dispute under clause 25(a), the parties must meet at least once to try and settle the dispute. At such meeting, the parties must be represented by someone having authority to settle the dispute.
- c. An agreement reached during the meeting will be recorded in writing and a copy kept by both parties. Such agreement may be relied on as an addition to the Contract and used as reference for any subsequent action or omission by a party to the Contract.
- d. If the dispute cannot be resolved, either party has the right to pursue resolution of the dispute or difference through litigation, arbitration, or other means of dispute resolution.
- e. Notwithstanding that a dispute or difference has arisen, the Customer must continue to carry out its obligations under the Contract.

26. Indemnity and Liability

- a. The Customer indemnifies Black Cat (on an indemnity basis), defends Black Cat, and holds Black Cat harmless against any and all claims, expenses, losses, damages, penalties, and costs that Black Cat incurs or may incur as a direct or indirect result of any:
 - i. breach of the Contract by the Customer or any Consultant;
 - ii. loss or damage to property;
 - iii. claims in respect to injury or death arising out of or as a consequence the Contract;
 - iv. act or omission (including fraudulent, negligent, or unlawful acts or omissions) of the Customer or any Consultant; and/or
 - v. details, documents, or information provided by the Customer or any Representative.
- b. The indemnities in the Contract are continuing obligations, separate and independent from the other obligations of the parties. It is not necessary for Black Cat to incur expense or make any payment before enforcing a right of indemnity under this clause.
- c. To the maximum extent permitted by law, Black Cat's aggregate liability to the Customer in respect of the Contract (including arising out of the performance or non-performance of the Works), whether under the law of contract, tort, equity, or otherwise, is limited to one percent (1%) of the Contract Price.
- d. Black Cat has no liability to the Customer for consequential damages.

27. General

- a. Black Cat may, at its sole and unfettered discretion, subcontract the whole or any part of the Works.
- b. Time is of the essence in respect of all the Customer's obligations under the Contract.
- c. A notice under the Contract is deemed to be given if the notice is:
 - i. addressed to the party named; and
 - ii. sent using the contact information specified in the Quotation.
- d. A party may, by written notice to the other party, update the name and/or contact information specified in the Quotation.
- e. In these Standard Terms, the clause headings do not form part of the Contract and cannot be used to interpret the Contract.
- f. The Contract constitutes the entire agreement between the parties and supersedes any and all prior agreements or representations, whether oral or in writing, between the parties with respect to the subject matter of the Contract.



- g. None of the terms of the Contract can be amended unless both parties agree in writing.
- h. No failure to exercise or delay in exercising any right or remedy under the Contract operates as a waiver by Black Cat. Nor will any single or partial exercise by Black Cat of any right or remedy preclude any other or further exercise of that (or any other) right or remedy.
- i. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting the Contract. The language in the Contract will be interpreted as to its fair meaning and not strictly for or against any party.
- j. The parties agree that a construction of the Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result. If, despite the application of this clause, a provision of the Contract is found to be illegal or unenforceable, the provision will be read down to the maximum extent that it is valid and enforceable. The remainder of the Contract will remain valid and enforced to the maximum extent allowed by law.
- k. Neither party to the Contract may assign the Contract without the prior written consent of the other party.
- l. The Contract is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts having jurisdiction in appeal therefrom.