

Displayline Commercial Interiors – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "DIS" means Reteptyl Pty Ltd ATF PLC Unit Trust T/A Displayline Commercial Interiors, its successors and assigns or any person acting on behalf of and with the authority of Reteptyl Pty Ltd ATF PLC Unit Trust T/A Displayline Commercial Interiors. 5.6
- 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally. 5.7
- 1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by DIS to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other). 5.8
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between DIS and the Client in accordance with clause 5 below. 5.8
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth). 6.1
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 delivery of any Works. 6.2
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and DIS. 6.2
- 2.3 The Client acknowledges and agrees that in the event the Client is a tenant and is requesting Materials or Works on behalf of the landlord, then the Client shall be responsible for the payment of those Materials and Works, and shall organise to be reimbursed from the landlord between the two parties. In the event the landlord delays payment to the Client, this shall not affect the immediate required payment required from the Client to DIS. 6.3
- 2.4 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 to in that Act. 6.4
3. **Finance**
- 3.1 The Client acknowledges that when entering into a contract with DIS that the Client warrants that there are sufficient funds available to honour the Client's obligations of payment to DIS when due and will on request by DIS provide DIS with notification verifying the designated funds by way of a letter of credit from the Client's banking institute, evidence of leasing or other finance arrangements. 7.1
4. **Change in Control**
- 4.1 The Client shall give DIS 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, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by DIS as a result of the Client's failure to comply with this clause. 7.2
5. **Price and Payment**
- 5.1 At DIS' sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by DIS to the Client in respect of Works performed or Materials supplied; or
 - (b) DIS' quoted Price (subject to clause 5.2) which shall be binding upon DIS provided that the Client shall accept DIS' quotation in writing within thirty (30) days.7.3
- 5.2 DIS reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by a third party not being completed, change of design, hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to DIS in the cost of labour or Materials which are beyond DIS' control.7.4
- 5.3 Variations will be charged for on the basis of DIS' quotation, and will be detailed in writing, and shown as variations on DIS' invoice. The Client shall be required to respond to any variation submitted by DIS within ten (10) working days. Failure to do so will entitle DIS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion. 7.5
- 5.4 At DIS' sole discretion a deposit may be required. 7.6
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by DIS, which may be:
 - (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with DIS' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (c) the date specified on any invoice or other form as being the date for payment; or7.7
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by DIS. 7.8
- Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and DIS. 7.8
- The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by DIS nor to withhold payment of any invoice because part of that invoice is in dispute. 8.1
- Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to DIS an amount equal to any GST DIS must pay for any supply by DIS under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price. 8.2
- 8.3
6. **Delivery of the Works**
- 6.1 Subject to clause 6.2 it is DIS' responsibility to ensure that the Works start as soon as it is reasonably possible. The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that DIS claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond DIS' control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify DIS that the site is ready.8.4
- DIS may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. 8.4
- Any time specified by DIS for delivery of the Works is an estimate only and DIS will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that DIS is unable to supply the Works as agreed solely due to any action or inaction of the Client, then DIS shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials. 8.5
- 8.6
7. **General Risk**
- 7.1 If DIS retains ownership of the Materials under clause 17 then:
 - (a) where DIS is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by DIS or DIS' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where DIS is to both supply and install Materials then DIS shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.8.7
- 8.8
- 8.9
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests DIS to leave Materials outside DIS' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense. 8.10
- 7.3 All customary building industry tolerances shall apply to the dimensions and measurements of the Materials unless DIS and the Client agree otherwise in writing. DIS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, DIS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. 9.1
- 7.5 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical or plumbing connections (including, but not limited to, meter boxes, main switches, circuit breakers, electrical cable, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, non-compliant existing plumbing or dangerous access to roofing or other areas), DIS reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then DIS shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6.2 above) until DIS is satisfied that it is safe for the installation to proceed. 10.1
- 10.2
- 10.3 The Client acknowledges that DIS is only responsible for parts that are replaced by DIS, and in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify DIS against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising. 10.4
- The Client acknowledges that variations of colour, shade, occlusions, natural fissures, veining and grain are inherent in all kiln fired products, engineered and natural products (including, but not limited to tiles, stone, timber, etc.). While every effort will be taken by DIS to match colour, shade, veining or grain of product, DIS shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied. 10.1
- The Client acknowledges that Materials supplied may:
 - (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.11.2
- 11.3
8. **Tiles, Flooring and Carpet Risk**
- DIS gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond DIS' control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages. 11.3
- DIS will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds. 11.3
- Whilst DIS will take all due care to avoid contamination of the finished surface, DIS accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite. 12.1
- DIS will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects. 12.1
- The Client acknowledges and accept that:
 - (a) whilst carpet manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; and
 - (b) carpet manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
 - (c) the installation process for carpet may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.12.2
- The Client acknowledges and agrees that DIS shall not be liable for any loss, damages or costs however arising in the event that:
 - (a) a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible product; or
 - (b) an object is dragged across it as vinyl can rip and tear; or
 - (c) the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).12.3
- DIS does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in bison board, or thin line board will show through the vinyl. 12.3
- The Client acknowledges and agrees that vinyl will not fully seal a floor around the edges particularly around showers or baths; the Client also agrees water can get underneath and therefore bubble and/or discolour the vinyl. DIS shall not be held liable for any loss, damages or costs however arising due to the same. 12.4
- DIS hereby requests the Client to remove any and all appliances in the installation area prior to the commencement of any Works. The Client acknowledges and agrees that DIS shall not be held liable for any loss, damages or costs arising due to the Client's failure to comply with this clause. 12.4
- DIS shall advise the Client if DIS believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the vinyl to bubble and discolour) however the Client acknowledges that it is not always possible to identify such problems therefore the Client agrees that DIS shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Materials. 12.5
- The Client acknowledges that whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor. 12.5
9. **Timber Clauses**
- Timber is a hygroscopic material subject to expansion and contraction therefore DIS will accept no responsibility for gaps that may appear in the timber surfaces during prolonged dry periods. 12.6
10. **Paint/Plaster Risk**
- The Client acknowledges that Materials supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. DIS will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur. 12.7
- DIS shall not be liable for inferior existing paintwork where DIS' paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish. 12.7
- DIS shall not be held liable for the quality of the Works if the Client does not follow DIS' recommendations as to the number of coats of paint required to obtain the final finish if the Client chooses to accept a reduced Price based on fewer coats of paint. 12.8
- DIS shall not be liable whatsoever for any loss or damage to the Works (including, but not limited to, painted surfaces) that is caused by any other tradesmen. 12.8
11. **Electrical and Plumbing Risk**
- All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards. 12.9
- The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where DIS is requested to merely clear such blockages, DIS can offer no guarantee against recurrence or further damage. In the event of collapse during the pipe clearing process, DIS will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work. 12.9
- In the event that the Client requests DIS to use drain/pipe unblocking equipment, and DIS does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, DIS may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment. 12.9
12. **Client Responsibilities**
- It is the intention of DIS and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding to enable the Works to be undertaken (where in DIS' opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed. 12.10
- The Client shall provide, power, lights, water and any other service deemed to be essential to the contract as specified in the quote or tender documents. 12.10
- The Client will provide to DIS a copy of the Asbestos Register and Asbestos Management Plan for the worksite prior to any Works being commenced. 12.10
13. **Access**
- The Client shall ensure that DIS has clear and free access to the work site at all times to enable them to undertake the Works. DIS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of DIS. It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by DIS. 13.1
14. **Underground Locations**
- Prior to DIS commencing any work the Client must advise DIS of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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 on site. 14.1
- Whilst DIS will take all care to avoid damage to any underground services the Client agrees to indemnify DIS 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 clause 14.1. 14.1
15. **Compliance with Laws**
- The Client and DIS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works. 15.1
- The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works. 15.2
- The Client agrees that the site will comply with any work health and safety (WH&S) laws relating to building/construction sites and any other relevant safety standards or legislation. 15.3
16. **Surplus Materials**
- Unless otherwise stated elsewhere in this contract:
 - (a) any suitable new Materials will be used;
 - (b) demolished Materials remain the Client's property; and
 - (c) Materials which the DIS brings to the site which are surplus remain the property of the DIS.16.1
17. **Title**
- DIS and the Client agree that ownership of the Materials shall not pass until:
 - (a) the Client has paid DIS all amounts owing to DIS; and
 - (b) the Client has met all of its other obligations to DIS.17.1
- Receipt by DIS 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. 17.2
- It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 17.1:
 - (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to DIS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for DIS and must pay to DIS the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by DIS shall be sufficient evidence of DIS' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with DIS to make further enquiries.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of17.3

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- the Materials then the Client must hold the proceeds of any such act on trust for DIS and must pay or deliver the proceeds to DIS on demand.
- (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of DIS and must sell, dispose of or return the resulting product to DIS as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises DIS to enter any premises where DIS believes the Materials are kept and recover possession of the Materials.
- (g) DIS may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of DIS.
- (i) DIS may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 18. Personal Property Securities Act 2009 ("PPSA")**
- 18.1 In this clause financing statement, financing change 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 all Materials and/or collateral (account) – being a monetary obligation of the Client to DIS for Works – that have previously been supplied and that will be supplied in the future by DIS 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 DIS 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 18.3(a)(i) or 18.3(a)(ii);
- (b) indemnify, and upon demand reimburse, DIS 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 Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of DIS;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of DIS;
- (e) immediately advise DIS of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 18.4 DIS 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 hereby waives its 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 its 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 DIS, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 18.8 The Client shall unconditionally ratify any actions taken by DIS under clauses 18.3 to 18.5.
- 18.9 Subject to any express provisions to the contrary (including those contained in this clause 18) 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 DIS agreeing to supply the Materials, 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 DIS from and against all DIS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DIS' rights under this clause.
- 19.3 The Client irrevocably appoints DIS and each director of DIS 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 Returns, Competition and Consumer Act 2010 (CCA)**
- 20.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify DIS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow DIS to inspect the Materials or to review the Works 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 DIS 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, DIS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. DIS' 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, DIS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 20.6 If DIS is required to replace any Materials under this clause or the CCA, but is unable to do so, DIS may refund any money the Client has paid for the Materials.
- 20.7 If DIS is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then DIS may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 20.8 If the Client is not a consumer within the meaning of the CCA, DIS' liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by DIS at DIS' sole discretion;
- (b) limited to any warranty to which DIS is entitled, if DIS did not manufacture the Materials;
- (c) otherwise negated absolutely.
- 20.9 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) DIS has agreed that the Materials are defective; and
- (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 20.10 Notwithstanding clauses 20.1 to 20.9 but subject to the CCA, DIS 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 Materials;
- (b) the Client using the Materials for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Works by the Client or any third party without DIS' prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by DIS;
- (f) fair wear and tear, any accident, or act of God.
- 20.11 Notwithstanding anything contained in this clause if DIS is required by a law to accept a return then DIS will only accept a return on the conditions imposed by that law.
- Intellectual Property**
- 21.1 Where DIS has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in DIS, and shall only be used by the Client at DIS' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of DIS.
- 21.2 The Client warrants that all designs, specifications or instructions given to DIS will not cause DIS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify DIS against any action taken by a third party against DIS in respect of any such infringement.
- 21.3 The Client agrees that DIS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which DIS has created for the Client.
- Default and Consequences of Default**
- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at DIS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes DIS any money the Client shall indemnify DIS from and against all costs and disbursements incurred by DIS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, DIS' contract default fee, and bank dishonour fees).
- 22.3 Further to any other rights or remedies DIS may have under this contract, if a Client has made payment to DIS, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DIS under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 22.4 Without prejudice to DIS' other remedies at law DIS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to DIS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to DIS becomes overdue, or in DIS' 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 DIS;
- (c) the Client becomes insolvent or bankrupt, 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.
- 23. Cancellation**
- Without prejudice to any other remedies DIS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions DIS may suspend or terminate the supply of Works to the Client. DIS will not be liable to the Client for any loss or damage the Client suffers because DIS has exercised its rights under this clause.
- 23.1 DIS may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice DIS shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to DIS for Works already performed. DIS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by DIS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 24. Privacy Act 1988**
- The Client agrees for DIS 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 DIS.
- The Client agrees that DIS 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.
- The Client consents to DIS being given a consumer credit report to collect overdue payment on commercial credit.
- The Client agrees that personal credit information provided may be used and retained by DIS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; 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 Works.
- DIS 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.
- The information given to the CRB may include:
- (a) personal information as outlined in 24.1 above;
- (b) name of the credit provider and that DIS 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 DIS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of DIS, 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).
- The Client shall have the right to request (by e-mail) from DIS:
- (a) a copy of the information about the Client retained by DIS and the right to request that DIS correct any incorrect information; and
- (b) that DIS does not disclose any personal information about the Client for the purpose of direct marketing.
- DIS 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.
- (a) any money payable to DIS becomes overdue, or in DIS' 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 DIS;
- (c) the Client becomes insolvent or bankrupt, 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.
- 25. Dispute Resolution**
- If a dispute arises between the parties to this contract 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.
- 26. Building and Construction Industry Security of Payments Act 2009**
- At DIS' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply. 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 Payments Act 1999 of South Australia, except to the extent permitted by the Act where applicable.
- 27. 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.
- 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.
- 28. General**
- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which DIS has its principal place of business, and are subject to the jurisdiction of the courts in South Australia.
- 28.3 Subject to clause 20 DIS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by DIS of these terms and conditions (alternatively DIS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 28.4 DIS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 28.5 The Client cannot assign or licence without the written approval of DIS.
- 28.6 DIS may elect to subcontract out any part of the Works 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 DIS' sub-contractors without the authority of DIS.
- 28.7 The Client agrees that DIS 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 DIS to provide Works to the Client.
- 28.8 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.
- 28.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on the client.