

**1. Definitions**

- 1.1 “EMS Labour Hire” means EMS Labour Hire Pty Ltd, its successors and assigns, or any person acting on behalf of, and with the authority of, EMS Labour Hire Pty Ltd.
- 1.2 “Client” means the person/s purchasing the Works, as specified in any quotation, order, invoice or other document, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Personnel” means any individual sent by EMS Labour Hire to the Client for employment by the Client on a temporary, casual, or part time basis (where the context so permits the terms ‘Personnel’ and/or EMS Labour Hire shall be interchangeable for the other).
- 1.4 “Works” means all Works (including any Incidental Materials) supplied by EMS Labour Hire to the Client via the Personnel, at the Client’s request, from time to time (where the context so permits the terms ‘Works’, ‘Incidental Materials’ and/or ‘Personnel’ shall be interchangeable for the other).
- 1.5 “Price” means the Price payable for the Works, as agreed between EMS Labour Hire and the Client in accordance with clause 4 below.

**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 provision, of Works provided by EMS Labour Hire to the Client.
- 2.2 These terms and conditions may only be amended with EMS Labour Hire’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and EMS Labour Hire.
- 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 to in that Act.

**3. Change in Control**

- 3.1 The Client shall give EMS Labour Hire 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 EMS Labour Hire as a result of the Client’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At EMS Labour Hire’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by EMS Labour Hire to the Client for Works provided; or
  - (b) EMS Labour Hire’s quoted price (subject to clause 4.2) which will be valid for the period stated in EMS Labour Hire’s quotation or otherwise for a period of thirty (30) days.
- 4.2 EMS Labour Hire reserves the right to change the Price:
  - (a) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (b) 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 any third party not being completed substantially or at all, any required changes or modifications to equipment/plant/machinery/materials, designs or plans, or hidden pipes and wiring/cables, etc.) which are only discovered on commencement of the Works; or
  - (c) in the event of increases to EMS Labour Hire in the cost of labour (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond EMS Labour Hire’s control.
- 4.3 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by EMS Labour Hire, which may be:
  - (a) thirty (30) days following the end of the month in which a statement is posted to the Client’s address for notices;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EMS Labour Hire.
- 4.4 Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Client and EMS Labour Hire.
- 4.5 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 EMS Labour Hire nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to EMS Labour Hire an amount equal to any GST EMS Labour Hire must pay for any provision of Works by EMS Labour Hire under this contract 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 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.

**5. Provision of the Works**

- 5.1 Subject to clause 5.2, it is EMS Labour Hire’s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that EMS Labour Hire claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond EMS Labour Hire’s control, including but not limited to, any event under clause 18.7 or any failure by the Client to:
  - (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify EMS Labour Hire that the site is ready.
- 5.3 Where EMS Labour Hire provide the Personnel to undertake the Works in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by EMS Labour Hire for provision of the Works is an estimate only and EMS Labour Hire 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 Works to be provided at the time and place as was arranged between both parties. In the event that EMS Labour Hire is unable to provide the Works as agreed solely due to any action or inaction of the Client then EMS Labour Hire shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.

**6. Risk**

- 6.1 Where the Client has supplied equipment/plant/machinery/materials for EMS Labour Hire to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those equipment/plant/machinery/materials. EMS Labour Hire shall not be responsible for any defects in the Works, any loss or damage to the equipment/plant/machinery/materials (or any part thereof), howsoever arising from the use of equipment/plant/machinery/materials supplied by the Client.

**7. Access**

7.1 The Client shall ensure that EMS Labour Hire has clear and free access to the site at all times to enable them to undertake the Works. EMS Labour Hire shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted, paved or grassed areas, ceiling tiles and panels, face brickwork and rendered masonry services), unless due to the negligence of EMS Labour Hire

**8. Compliance with Laws**

8.1 The Client and EMS Labour Hire 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, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

8.2 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Works, which are not included in the project documents provided by EMS Labour Hire.

**9. Labour Hire**

9.1 EMS Labour Hire undertakes to:

- (a) use its best endeavours to provide suitably qualified Personnel to undertake the Works in compliance with the Client's requirements;
- (b) make the payment of all amounts due to the Personnel under the terms of any relevant industrial instrument or contract;
- (c) make the payment of all leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Personnel is a fulltime employee;
- (d) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law; and
- (e) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
- (f) maintain workers compensation insurance for all Personnel, except where state laws specify otherwise.

9.2 EMS Labour Hire's quotation shall specify:

- (a) the Works to be provided by the Personnel;
- (b) the job description of the Personnel;
- (c) the commencement and completion dates of the Works;
- (d) the site where the Works shall be performed;
- (e) the Price payable by the Client for the Works.

9.3 EMS Labour Hire must be advised by the Client of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Client accordingly.

9.4 The Client acknowledges that only lunch breaks shall be deducted from total hours charged by EMS Labour Hire to the Client.

9.5 The Client agrees that they shall supply to EMS Labour Hire (on the day specified by EMS Labour Hire) a duly authorised timesheet to enable EMS Labour Hire to pay the Personnel when due.

9.6 It is the responsibility of the Client to:

- (a) provide supervision of the Personnel to ensure that the Works are carried out to a satisfactory standard; and
- (b) provide the Personnel with appropriate information, supervision and training to enable them to perform the Works safely; and
- (c) provide the Personnel with a site specific and job specific induction if necessary. This induction is to be completed before the Personnel commences the Works with the Client; and
- (d) familiarise the Personnel with the Client's operations, facilities, policies and procedures, and properly inform EMS Labour Hire of any specific requirements of the job which the Personnel will be required to undertake; and
- (e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Work Health and Safety legislation) applicable to employers and otherwise to treat Personnel as if they were employed by the Client; and
- (f) effect and maintain insurance cover in respect of any claims which may be made against the Client by the Personnel that arises as a result of the Client's occupation of site, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Personnel, and to indemnify EMS Labour Hire against any such claims; and
- (g) properly maintain plant and equipment; and
- (h) provide where the Personnel may be required to 'stand down' because of adverse weather conditions a minimum 'stand down' payment of not less than four (4) hours per individual, unless an alternative minimum payment has been agreed between EMS Labour Hire and the Client in writing.

9.7 The Client agrees that it will not request the Personnel to engage in any work or use any equipment that the Personnel is unfamiliar with, or unqualified to use or perform, or have not received adequate training for.

9.8 The Client agrees that they will immediately notify EMS Labour Hire of any variation of duties given to the Personnel that may affect the remuneration payable to the Personnel or may involve additional risk to the Personnel.

9.9 The Client agrees that it will immediately notify EMS Labour Hire of any injury sustained by the Personnel.

9.10 The Client acknowledges that they remain responsible for controlling the manner, time and place in which the Personnel shall carry out the Works as assigned by the Client and that in doing so the Client shall be liable for all acts and omissions of the Personnel the same as they would be for any of their own employees.

9.11 In no circumstances shall EMS Labour Hire be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of the Personnel whether or not any such act or omission is negligent, and the Client acknowledges and agrees to indemnify EMS Labour Hire against all such liability whether alleged or proved. The Client is to include all Personnel in the Client's own public liability insurance cover.

9.12 The Client agrees that any working environment in which the Personnel is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Client agrees to immediately notify EMS Labour Hire if the Personnel is involved in a sexual harassment or discrimination claim during the performance of the Works.

9.13 The Client acknowledges that EMS Labour Hire makes no representation or guarantee that the Personnel will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.

9.14 The Client agrees not to employ, contract, sub-contract or utilise in any way an employee or past employee of EMS Labour Hire (other than through EMS Labour Hire) for a period of no less than twelve (12) months after that employee's last employment with EMS Labour Hire. The Client agrees that if this clause is contravened EMS Labour Hire will be able to invoice the Client at its current hourly rate the hours that the employee has been employed, contracted, sub-contracted or utilised in any way by the Client and agrees to pay said invoice in accordance with the standard payment terms contained in this contract.

- 10. Title**
- 10.1 EMS Labour Hire and the Client agree that the Client's obligations to EMS Labour Hire for the provision the Works shall not cease (and ownership of any Incidental Materials shall not pass) until:
- (a) the Client has paid EMS Labour Hire all amounts owing to EMS Labour Hire; and
- (b) the Client has met all other obligations due by the Client to EMS Labour Hire in respect of all contracts between EMS Labour Hire and the Client.
- 10.2 Receipt by EMS Labour Hire 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 EMS Labour Hire's ownership or rights in respect of the Incidental Materials, and this contract, shall continue.
- 10.3 It is further agreed that, until ownership of the Incidental Materials passes to the Client in accordance with clause 10.1:
- (a) the Client is only a bailee of the Incidental Materials and unless the Incidental Materials have become fixtures must return the Incidental Materials to EMS Labour Hire on request; and
- (b) the Client holds the benefit of the Client's insurance of the Incidental Materials on trust for EMS Labour Hire and must pay to EMS Labour Hire the proceeds of any insurance in the event of the Incidental Materials being lost, damaged or destroyed; and
- (c) the production of these terms and conditions by EMS Labour Hire shall be sufficient evidence of EMS Labour Hire's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with EMS Labour Hire to make further enquiries; and
- (d) the Client must not sell, dispose, or otherwise part with possession of the Incidental Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Incidental Materials then the Client must hold the proceeds of any such act on trust for EMS Labour Hire and must pay or deliver the proceeds to EMS Labour Hire on demand; and
- (e) the Client should not convert or process the Incidental 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 EMS Labour Hire and must sell, dispose of or return the resulting product to EMS Labour Hire as it so directs; and
- (f) unless the Incidental Materials have become fixtures the Client irrevocably authorises EMS Labour Hire to enter any premises where EMS Labour Hire believes the Incidental Materials are kept and recover possession of the Incidental Materials; and
- (g) EMS Labour Hire may recover possession of any Incidental Materials in transit whether or not delivery has occurred; and
- (h) the Client shall not charge or grant an encumbrance over the Incidental Materials nor grant nor otherwise give away any interest in the Incidental Materials while they remain the property of EMS Labour Hire; and
- (i) EMS Labour Hire may commence proceedings to recover the Price notwithstanding that ownership of the Incidental Materials has not passed to the Client.
- 11. Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 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 Incidental Materials, and/or any monetary obligation of the Client to EMS Labour Hire for Works, that have previously been provided (if any), and that will be provided in the future, by EMS Labour Hire to the Client.
- 11.3 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 EMS Labour Hire 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 11.3(a)(i) or 11.3(a)(ii);
- (b) indemnify, and upon demand reimburse, EMS Labour Hire 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 EMS Labour Hire;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Works in favour of a third party without the prior written consent of EMS Labour Hire
- 11.4 EMS Labour Hire 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.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by EMS Labour Hire, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by EMS Labour Hire under clauses 11.3 to 11.5.
- 11.9 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.
- 12. Security and Charge**
- 12.1 In consideration of EMS Labour Hire agreeing to provide Personnel, 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).
- 12.2 The Client indemnifies EMS Labour Hire from and against all EMS Labour Hire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EMS Labour Hire's rights under this clause.
- 12.3 The Client irrevocably appoints EMS Labour Hire and each director of EMS Labour Hire as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
- 13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 13.1 The Client must review the Personnel/inspect the Works on completion and must within forty-eight (48) hours of such time notify EMS Labour Hire in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quotation. The Client must notify any other alleged defect/damage/error/omission/shortage in quantity/failure as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow EMS Labour Hire to review/inspect the Personnel/Works.
- 13.2 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**").

- 13.3 EMS Labour Hire acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, EMS Labour Hire makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Personnel/Works. EMS Labour Hire's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, EMS Labour Hire's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If EMS Labour Hire is required to rectify, re-provide, or pay the cost of re-providing the Personnel/Works under this clause or the CCA, but is unable to do so, then EMS Labour Hire may refund any money the Client has paid for the Personnel/Works but only to the extent that such refund shall take into account the value of Personnel/Works which have been provided to the Client which were not defective.
- 13.7 If the Client is not a consumer within the meaning of the CCA, EMS Labour Hire's liability for any defect/damage/error/ omission/shortage in quantity/failure in the Personnel/Works is:
- (a) limited to the value of any express warranty, or warranty card, provided to the Client by EMS Labour Hire (at EMS Labour Hire's sole discretion);
  - (b) limited to any warranty to which EMS Labour Hire is entitled, if EMS Labour Hire did not manufacture the Materials; or
  - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 13.1; and
  - (b) EMS Labour Hire has agreed that the Personnel/Works/Incidental Materials are defective/damaged (or some other error/omission/shortage in quantity/failure is present); and
  - (c) the Personnel and/or Incidental Materials (where applicable) are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) where applicable, any Incidental Materials are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, EMS Labour Hire 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 Incidental Materials;
  - (b) the Client using the Personnel/Incidental Materials for any purpose other than that for which they were provided/designed;
  - (c) the Client continuing the use of the Personnel/Incidental Materials after any defect became apparent or should have become apparent to a reasonably prudent person, operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by EMS Labour Hire;
  - (e) fair wear and tear, any accident, or act of God.
- 13.10 Notwithstanding anything contained in this clause if EMS Labour Hire is required by a law to accept a return then EMS Labour Hire will only accept a return on the conditions imposed by that law.

#### 14. Default and Consequences of Default

- 14.1 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 EMS Labour Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes EMS Labour Hire any money, the Client shall indemnify EMS Labour Hire from and against all costs and disbursements incurred by EMS Labour Hire in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EMS Labour Hire's contract default fee, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies EMS Labour Hire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EMS Labour Hire may suspend or terminate the provision of Works to the Client. EMS Labour Hire will not be liable to the Client for any loss or damage the Client suffers because EMS Labour Hire has exercised its rights under this clause.
- 14.4 Without prejudice to EMS Labour Hire's other remedies at law, EMS Labour Hire shall be entitled to cancel all, or any part, of any order of the Client which remains unfulfilled, and all amounts owing to EMS Labour Hire shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EMS Labour Hire becomes overdue, or in EMS Labour Hire's opinion the Client will be unable to make a payment when it falls due;
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### 15. Cancellation

- 15.1 EMS Labour Hire may cancel any contract to which these terms and conditions apply, or cancel provision of the Personnel/Works at any time before the Personnel/Works have commenced, by giving written notice to the Client. On giving such notice EMS Labour Hire shall repay to the Client any money paid by the Client for the Personnel/Works. EMS Labour Hire shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels this contract, or provision of the Personnel/Works, the Client shall be liable for any and all loss incurred (whether direct or indirect) by EMS Labour Hire as a direct result of the cancellation (including, but not limited to, any loss of profits).

#### 16. Privacy Act 1988

- 16.1 The Client agrees for EMS Labour Hire 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 EMS Labour Hire.
- 16.2 The Client agrees that EMS Labour Hire 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.
- 16.3 The Client consents to EMS Labour Hire being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by EMS Labour Hire for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Personnel/Works; and/or

- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Personnel/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 Personnel/Works.
- 16.5 EMS Labour Hire 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.
- 16.6 The information given to the CRB may include:  
(a) personal information as outlined in 16.1 above;  
(b) name of the credit provider and that EMS Labour Hire 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 EMS Labour Hire has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);  
(g) information that, in the opinion of EMS Labour Hire, 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).
- 16.7 The Client shall have the right to request (by e-mail) from EMS Labour Hire:  
(a) a copy of the information about the Client retained by EMS Labour Hire and the right to request that EMS Labour Hire correct any incorrect information; and  
(b) that EMS Labour Hire does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 EMS Labour Hire 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 contract or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Client can make a privacy complaint by contacting EMS Labour Hire via e-mail. EMS Labour Hire 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](http://www.oaic.gov.au).
- 17. Building and Construction Industry Security of Payments Act 1999**
- 17.1 At EMS Labour Hire's sole discretion, if there are any disputes or claims for unpaid invoices then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 17.2 Nothing in this contract 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 New South Wales, except to the extent permitted by the Act where applicable.
- 18. General**
- 18.1 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.
- 18.2 These terms and conditions, and any contract to which they apply, shall be governed by the laws of New South Wales, the State in which EMS Labour Hire has its principal place of business, and are subject to the jurisdiction of the Dubbo Courts in that State.
- 18.3 Subject to clause 13, EMS Labour Hire 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 EMS Labour Hire of these terms and conditions (alternatively EMS Labour Hire's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 18.4 EMS Labour Hire may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 18.5 EMS Labour Hire may sub-contract all or any part of its rights and/or obligations under this contract with the written consent of the Client, which shall not be unreasonably withheld. Where EMS Labour Hire elects to sub-contract out any part of the Works, it shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and accepts that it has no authority to give any instruction to any of EMS Labour Hire's sub-contractors without the authority of EMS Labour Hire.
- 18.6 The Client agrees that EMS Labour Hire may amend these terms and conditions at any time. If EMS Labour Hire makes a change to these terms and conditions, then that change will take effect from the date on which EMS Labour Hire notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for EMS Labour Hire to provide Works to the Client.
- 18.7 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.
- 18.8 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.