
Nailed It Creations Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 "Nailed It" means Nailed It Creations Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Nailed It Creations Pty Ltd.

1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Nailed It to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:

- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Client's executors, administrators, successors and permitted assigns.

1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Nailed It 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).

1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**

1.7 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between Nailed It and the Client in accordance with clause 6 below.

1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

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.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with Nailed It and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, Nailed It reserves the right to refuse delivery.

2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that Nailed It shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by Nailed It in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Nailed It in respect of the Works.

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3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Nailed It; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to Nailed It as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies Nailed It in writing that said person is no longer the Client's duly authorised representative).

4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise Nailed It in writing of the parameters of the limited authority granted to their representative.

4.3 The Client specifically acknowledges and accepts that they will be solely liable to Nailed It for all additional costs incurred by Nailed It (including Nailed It's profit margin) in providing any Works, Materials or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

5.1 The Client shall give Nailed It 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by Nailed It as a result of the Client's failure to comply with this clause.

6. Price and Payment

6.1 At Nailed It's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by Nailed It to the Client in respect of Works performed or Materials supplied; or
- (b) Nailed It's quoted Price (subject to clause 6.2) which shall be binding upon Nailed It provided that the Client shall accept Nailed It's quotation in writing within thirty (30) days.

6.2 Nailed It 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, limitations to accessing the site, obscured building defects, incorrect measurements provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to Nailed It in the cost of labour or Materials which are beyond Nailed It's control.

6.3 Variations will be charged for on the basis of Nailed It's quotation, and will be detailed in writing, and shown as variations on Nailed It's invoice. The Client shall be required to respond to any variation submitted by Nailed It within ten (10) working days. Failure to do so will entitle Nailed It 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.

6.4 At Nailed It's sole discretion a non-refundable deposit may be required.

6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Nailed It, which may be

- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with Nailed It's 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) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;

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(d) the date specified on any invoice or other form as being the date for payment; or

(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Nailed It.

6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Nailed It.

6.7 Nailed It may in its discretion allocate any payment received from the Client towards any invoice that Nailed It determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Nailed It may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Nailed It, payment will be deemed to be allocated in such manner as preserves the maximum value of Nailed It's Purchase Money Security Interest (as defined in the PPSA) in the Materials.

6.8 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 Nailed It nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Nailed It an amount equal to any GST Nailed It must pay for any supply by Nailed It under this or any other contract 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.

7. Provision of the Works

7.1 Subject to clause 7.2 it is Nailed It's responsibility to ensure that the Works start as soon as it is reasonably possible.

7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Nailed It claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Nailed It's 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 Nailed It that the site is ready.

7.3 At Nailed It's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

7.4 Nailed It 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.

7.5 Any time specified by Nailed It for delivery of the Works is an estimate only and Nailed It 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 Nailed It is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Nailed It 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. Dimensions, Plans and Specifications

8.1 Nailed It 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, Nailed It accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

8.2 All customary building industry tolerances shall apply to the dimensions and measurements of the Works unless Nailed It and the Client agree otherwise in writing.

Nailed It with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data.

Nailed It shall not be liable whatsoever for any errors in the Works that are caused by incorrect or inaccurate data being supplied by the Client.

8.4 In the event the Client gives information relating to measurements and quantities of Materials required in completing the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Nailed It places an order based on these measurements and quantities. Nailed It accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

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9. Risk

9.1 If Nailed It retains ownership of the Materials under clause 13 then:

(a) where Nailed It 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 either:

(i) the Client or the Client's nominated carrier takes possession of the Materials at Nailed It's address; or

(ii) the Materials are delivered by Nailed It or Nailed It's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

(b) where Nailed It is to both supply and install Materials then Nailed It 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.

9.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests Nailed It to leave Materials outside Nailed It's 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.

9.3 Where Nailed It is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and Nailed It shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

9.4 In the event asbestos or any other toxic substances are discovered at the property, it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Nailed It against any costs incurred by Nailed It as a consequence of such discovery including Nailed It's right to charge the Client for any stand-down time. Under no circumstances will Nailed It handle removal of asbestos product.

9.5 If under any circumstances the Works are delayed to the failings of any third party to complete preliminary Works, then Nailed It reserves the right;

(a) vary the quoted price as per clause 6.2; and/or

(b) charge the Client for any stand-down that has been incurred.

9.6 Where the Client has supplied materials for Nailed It to complete the Works, the Client acknowledges that they accept responsibility for adherence to industry standards that they are suitable for purpose, and no faults are inherent in the materials. Nailed It shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

9.7 Whilst Nailed It will make every effort to match sales samples to the finished Materials Nailed It accepts no liability whatsoever where such samples differ to the finished Materials supplied.

9.8 The Client acknowledges that Materials supplied may

(a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and

(b) expand, contract or distort as a result of exposure to heat, cold, weather; and

(c) mark or stain if exposed to certain substances; and

(d) be damaged or disfigured by impact or scratching.

9.9 The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Materials.

9.10 The Client agrees to be present at the site when and as reasonably requested by Nailed It and its employees, Nailed It's and/or agents and to make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation

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schedule agreed to between Nailed It and the Client, any costs will be invoiced to the Client as an extra.

9.11 Nailed It shall not be held responsible for any damage to the Materials or delays to delivery caused by outside agents. Where the Client requests Nailed It to repair such damage then Nailed It reserves the right to charge the Client for any costs incurred in rectifying such damage.

10. Hidden Services

10.1 Prior to Nailed It commencing any work the Client must advise Nailed It of the precise location of all hidden services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

10.2 Whilst Nailed It will take all care to avoid damage to any hidden services the Client agrees to indemnify Nailed It 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 10.1.

11. Access

11.1 The Client shall ensure that Nailed It has clear and free access to the work site at all times to enable them to undertake the Works. Nailed It shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Nailed It.

12. Compliance with Laws

12.1 The Client and Nailed It 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.

12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

12.3 The Client agrees that the site will comply with any works health and safety laws (WHS) relating to building/construction sites and any other relevant safety standards or legislation.

13. Title

13.1 Nailed It and the Client agree that ownership of the Materials shall not pass until:

- (a) the Client has paid Nailed It all amounts owing to Nailed It; and
- (b) the Client has met all of its other obligations to Nailed It.

13.2 Receipt by Nailed It 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.

13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:

- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Nailed It on request; (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Nailed It and must pay to Nailed It 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 Nailed It shall be sufficient evidence of Nailed It's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Nailed It 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 of the Materials then the Client must hold the proceeds of any such act on trust for Nailed It and must pay or deliver the proceeds to Nailed It 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 Nailed It and must sell, dispose of or return the resulting product to Nailed It as it so directs;
- (f) unless the Materials have become fixtures the Client irrevocably authorises Nailed It to enter any premises where Nailed It believes the Materials are kept and recover possession of the Materials;
- (g) Nailed It 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

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while they remain the property of Nailed It;

(i) Nailed It may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

14. Personal Property Securities Act 2009 (“PPSA”)

14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

14.2 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 Nailed It for Works – that have previously been supplied and that will be supplied in the future by Nailed It to the Client.

14.3 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 Nailed It 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 14.3(a)(i) or 14.3(a)(ii);

(b) indemnify, and upon demand reimburse, Nailed It 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 Nailed It;

(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 Nailed It;

(e) immediately advise Nailed It 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.

14.4 Nailed It 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.

14.5 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.

14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

14.7 Unless otherwise agreed to in writing by Nailed It, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

14.8 The Client shall unconditionally ratify any actions taken by Nailed It under clauses 14.3 to 14.5.

14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

15.1 In consideration of Nailed It 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).

15.2 The Client indemnifies Nailed It from and against all Nailed It's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Nailed It's rights under this clause.

15.3 The Client irrevocably appoints Nailed It and each director of Nailed It as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

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16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

16.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Nailed It 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 Nailed It to inspect the Materials or to review the Works provided.

16.2 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**).

16.3 Nailed It acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Nailed It makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Nailed It's liability in respect of these warranties is limited to the fullest extent permitted by law.

16.5 If the Client is a consumer within the meaning of the CCA, Nailed It's liability is limited to the extent permitted by section 64A of Schedule 2.

16.6 If Nailed It is required to replace any Materials under this clause or the CCA, but is unable to do so, Nailed It may refund any money the Client has paid for the Materials.

16.7 If Nailed It 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 Nailed It 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.

16.8 If the Client is not a consumer within the meaning of the CCA, Nailed It's 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 Nailed It at Nailed It's sole discretion; (b) limited to any warranty to which Nailed It is entitled, if Nailed It did not manufacture the Materials;
- (c) otherwise negated absolutely.

16.9 Subject to this clause 16, returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 16.1; and
- (b) Nailed It 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.

16.10 Notwithstanding clauses 16.1 to 16.9 but subject to the CCA, Nailed It 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 Nailed It's prior approval; (e) the Client failing to follow any instructions or guidelines provided by Nailed It;
- (f) fair wear and tear, any accident, or act of God.

16.11 Notwithstanding anything contained in this clause if Nailed It is required by a law to accept a return then Nailed It will only accept a return on the conditions imposed by that law.

17. Intellectual Property

17.1 Where Nailed It 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 Nailed It, and shall only be used by the Client at Nailed It's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Nailed It.

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17.2 The Client warrants that all designs, specifications or instructions given to Nailed It will not cause Nailed It to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Nailed It against any action taken by a third party against Nailed It in respect of any such infringement.

17.3 The Client agrees that Nailed It may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Nailed It has created for the Client.

18. Default and Consequences of Default

18.1 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 Nailed It's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

18.2 If the Client owes Nailed It any money the Client shall indemnify Nailed It from and against all costs and disbursements incurred by Nailed It in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Nailed It's contract default fee, and bank dishonour fees).

18.3 Further to any other rights or remedies Nailed It may have under this Contract, if a Client has made payment to Nailed It, 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 Nailed It under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

18.4 Without prejudice to Nailed It's other remedies at law Nailed It shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Nailed It shall, whether or not due for payment, become immediately payable if:

(a) any money payable to Nailed It becomes overdue, or in Nailed It's opinion the Client will be unable to make a payment when it falls due;

(b) the Client has exceeded any applicable credit limit provided by Nailed It;

(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.

19. Cancellation

19.1 Without prejudice to any other remedies Nailed It may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Nailed It may suspend or terminate the supply of Works to the Client. Nailed It will not be liable to the Client for any loss or damage the Client suffers because Nailed It has exercised its rights under this clause.

19.2 Nailed It 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 Nailed It shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Nailed It for Works already performed. Nailed It shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.3 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 Nailed It as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.4 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.

20. Privacy Policy

20.1 All emails, documents, images or other recorded information held or used by Nailed It is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Nailed It acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Nailed It acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Nailed It that may result in serious harm to the Client, Nailed It will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information

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must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

20.2 Notwithstanding clause 20.1, privacy limitations will extend to Nailed It in respect of Cookies where transactions for purchases/orders transpire directly from Nailed It's website. Nailed It agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Nailed It when Nailed It sends an email to the Client, so Nailed It may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Nailed It's website.

20.3 The Client agrees for Nailed It to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Nailed It.

20.4 The Client agrees that Nailed It 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.

20.5 The Client consents to Nailed It being given a consumer credit report to collect overdue payment on commercial credit.

20.6 The Client agrees that personal credit information provided may be used and retained by Nailed It 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.

20.7 Nailed It 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.

20.8 The information given to the CRB may include:

- (a) Personal Information as outlined in 20.3 above;
- (b) name of the credit provider and that Nailed It 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 Nailed It has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
- (g) information that, in the opinion of Nailed It, 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).

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20.9 The Client shall have the right to request (by e-mail) from Nailed It:

- (a) a copy of the Personal Information about the Client retained by Nailed It and the right to request that Nailed It correct any incorrect Personal Information; and
- (b) that Nailed It does not disclose any Personal Information about the Client for the purpose of direct marketing.

20.10 Nailed It 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.

20.11 The Client can make a privacy complaint by contacting Nailed It via e-mail. Nailed It 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.

21. Building Industry Fairness (Security of Payment) Act 2017

21.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.

21.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.

22. Service of Notices

22.1 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.

22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Nailed It may have notice of the Trust, the Client covenants with Nailed It as follows:

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of Nailed It (Nailed It will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust; (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

24. General

24.1 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.

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24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which Nailed It has its principal place of business, and are subject to the jurisdiction of the Wynnum Courts in that state.

24.3 Subject to clause 16, Nailed It 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 Nailed It of these terms and conditions (alternatively Nailed It's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

24.4 Nailed It may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

24.5 The Client cannot licence or assign without the written approval of Nailed It.

24.6 Nailed It 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 Nailed It's sub-contractor's without the authority of Nailed It.

24.7 The Client agrees that Nailed It may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 Nailed It to provide Works to the Client.

24.8 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.

24.9 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.