

TERMS & CONDITIONS



DOWNING
CONSTRUCTION

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STANDARD CONDITIONS OF QUOTATION AND SALE

1.1 Unless otherwise expressly agreed in writing by Downing Construction, these Conditions apply to any quotation given by Downing Construction and to any agreement for the supply of goods and/or the performance of work by Downing Construction.

1.2 It is expressly acknowledged and agreed that any order issued by the Customer consequent upon or with reference to the attached quotation will be deemed to be an acceptance to purchase upon the terms stated on the attached quotation and these Conditions and constitutes the entire agreement between Downing Construction and the Customer, and any conditions contained in the Customer's order will not apply notwithstanding a statement to the contrary in the Customer's order.

2. QUOTATION

2.1 Subject to clause 2.2, a quotation by Downing Construction remains open for 28 days from the date stated on the attached quotation (the "Quotation") and will lapse if the Customer fails to make an order in writing within that period.

2.2 Downing Construction may immediately withdraw a quotation, prior to the expiration of 28 days or terminate this Contract without notice if a Customer does not in Downing Construction's opinion obtain a satisfactory credit assessment.

2.3 The Contract is conditional upon the Customer having issued its purchase order a minimum number of days, equivalent to the lead time specified in the Quotation, before the Estimated Start Date.

3. VARIATIONS

3.1 Downing Construction may, in its absolute discretion, perform a Variation if it receives a written instruction from an employee or agent of the Customer to perform the Variation for the Customer.

3.2 The price payable for a Variation performed by Downing Construction is to be determined by agreement between Downing Construction and the Customer within two business days after the written instruction under clause

3.1 is received by Downing Construction and the agreed price for the Variation will be added to or deducted from the Contract Sum. If agreement cannot

be reached the Customer will pay the price determined by Downing Construction and any dispute in relation to the Variation will be dealt with under clause 10.

3.3 Where the Contract Sum is not quoted as being a "fixed price", Downing Construction may at its option vary the Contract Sum at any time to take account of any variation in labour or material costs and the Customer will pay the varied Contract Sum.

4. PAYMENT

4.1 The Customer will pay to Downing Construction the Contract Sum in accordance with clause 4 and the terms of the Customer's credit account with Downing Construction (if any).

4.2 Any tax, including a goods and services tax or similar tax or other statutory charge which is imposed on or payable, at the election of any person, in relation to any part of or all of the Works or in respect of the supply of anything under or pursuant to this Contract (excluding income and capital gains tax) will, to the extent it is not included in the Contract Sum or any other payment due under this agreement, be added to the Contract Sum or such other payment.

4.3 Customers with approved credit accounts must make payment in full for all goods and / or Works no later than 14 days following date of an invoice.

4.4 If a Customer has not been granted an approved credit account with Downing Construction payment terms must be agreed with Downing Construction.

4.5 All payments will be made in full and no amount may be withheld by the Customer by way of security, set-off, deduction or counter-claim.

5. COMPLETION

5.1 The Works are deemed to be complete when the Works are, in the reasonable opinion of Downing Construction, fit for the purpose for which they were intended as reasonably determined by Downing Construction.

5.2 The times or dates quoted for commencement, installation and completion of the Works will be estimated as accurately as possible but are not guaranteed nor is time of the essence. Downing Construction is not liable for loss, including consequential loss, loss of profits and liquidated damages which may be incurred by the Customer as a result of Downing Construction failing to satisfy any of these dates.

5.3 If the estimated completion of the Works is delayed by circumstances or events beyond the control of Downing Construction including, but not limited to, delays by Downing Construction's suppliers or subcontractors, delays directly or indirectly caused by the Customer, delay in giving Downing Construction access to the Site in a condition that complies with clause 6.1 of these Conditions or industrial disputes, and irrespective of any other concurrent cause of delay for which Downing Construction may be responsible:

(a) the Estimated Completion Date will automatically be extended by a reasonable period as determined by Downing Construction; or

(b) Downing Construction may terminate the Contract without any liability for breach of the Contract and Downing Construction will be entitled to full payment for all Works completed.

5.4 If the Customer causes Downing Construction any delay, the Customer will indemnify Downing Construction for the liquidated damages amount specified in the quotation, but if such amount is not specified then for all expenses incurred and losses suffered including consequential loss and loss of profit by Downing Construction as a consequence of any delay caused or contributed to by the Customer.

6. WORK ON SITE

6.1 The Customer will ensure that, at no cost to Downing Construction:

(a) the site is clear, free of water, clean, safe, has uninterrupted direct access for employees and sub-contractors of Downing Construction, its material and plant and equipment and sufficient space for scaffolding necessary for the performance of the Contract, and suitable vehicle off-loading is possible within five metres of the Site;

(b) ensure adequate facilities and assistance (as are reasonably required by Downing Construction) are provided to enable Downing Construction to efficiently, comfortably and safely perform the Works;

(c) prior to the commencement of the Works that all necessary licences, consents and approvals including local council permits and engineering certifications required for the performance of the Works have been obtained; and

(d) the structures to which Downing Construction is to install the Works comply with Downing Construction specifications set out or attached to the Quotation.

6.2 Downing Construction will not be responsible for the removal of broken or damaged materials or any debris on the Site remaining from the Works.

7. DEFAULT BY CUSTOMER

If the Customer defaults in the performance of any provision of the Contract or any other contract it has with Downing Construction or if it commits an Act of Insolvency then Downing Construction may, at its option and without prejudice to any other rights it may have under the Contract or at law:

(a) exercise its rights under clause 9 of these Conditions;

(b) suspend or cancel any existing credit facilities available to the Customer;

(c) suspend or cancel the performance of any part of or all of the Works then outstanding or outstanding under any other order or terminate the Contract; and

(d) set-off amounts owed to Downing Construction by the Customer under the Contract or as a result of any losses or damages or under any other account against any moneys owing to the Customer by Downing Construction.

8. WARRANTY AND LIABILITY

8.1 Other than the warranty and obligations of Downing Construction arising under its standard warranty for the Works all other warranties, liabilities, conditions and obligations are excluded to the extent permitted by law including, without limitation, any loss or liability directly or indirectly caused by or arising from the actual or alleged failure of any equipment, software or other item to satisfactorily recognise any date as its true calendar date or any period of time as its true period of time.

8.2 Downing Construction will not be liable for any shortage in delivery or product damaged prior to delivery unless Downing Construction is notified within two days after the goods are delivered to site.

9. INSURANCE, RISK AND PROPERTY

9.1 The Works are not to be insured by Downing Construction unless otherwise agreed in writing by Downing Construction.

9.2 The risk of damage to or loss or deterioration of any part of or all of the Works will pass to the Customer on the delivery of any goods comprised in the Works to the Site or on the expiry of five days from the date of notification by Downing Construction to the Customer that Downing Construction is ready to commence performance of the Works whichever is the earliest.

9.3 Notwithstanding that risk in part of the Works may pass to the Customer, property in and title to any part of the Works and the goods comprised in the Works will not pass to the Customer until all of the Contract Sum and all other money payable by the Customer to Downing Construction has been paid in full and until then:

(a) the Customer will hold goods supplied under the Contract as bailee of Downing Construction and a fiduciary relationship will exist between them; and

(b) Downing Construction may enter the Customer's premises without notice and without consent to inspect the goods and at any time take possession of any and all goods that are the property of Downing Construction and if necessary dismantle the Works and any existing structure.

10. DISPUTES

If a dispute arises out of or relates to the Contract, a party may not commence any Court or arbitration proceedings (except urgent interlocutory relief) under this clause 10 unless it has in good faith attempted to resolve the dispute expeditiously using informal dispute

resolution techniques such as mediation, expert evaluation or determination or similar techniques.

11. GENERAL

11.1 Downing Construction retains copyright and other intellectual property rights in all material it uses for the performance of the Works.

11.2 Unless expressly included in the Contract, all descriptive specifications, drawings, dimensions and data appearing in catalogues and other literature supplied by Downing Construction are approximate only and do not form part of the Contract.

11.3 The Customer warrants the accuracy, completeness and reliability of any documents or other information provided by the Customer to Downing Construction relating to the Works and warrants it has a right to use any drawings or other material it has provided to Downing Construction for the performance of the Works.

11.4 Any provision or clause of these Conditions which is void or unenforceable may be severed without affecting other provisions or clauses within these Conditions.

11.5 Downing Construction may sub-contract its obligations under the Contract. The Customer acknowledges that no sub-contractor has authority to agree to any Variation of the Works on behalf of Downing Construction.

11.6 Downing Construction reserves the right to change the construction or design of any goods to be supplied under the Contract, if in its judgment it does not significantly affect the performance characteristics of those goods.

11.7 The Customer will not transfer or assign this Contract without Downing Construction's written consent.

11.8 The Customer warrants it complies with the relevant provisions of the Home Building Act (1996) NSW or, if applicable its equivalent in any other State of Australia.

11.9 Except as may be otherwise specified by Downing Construction, the Contract will be governed by the laws of Australia and the Customer submits to the non-exclusive jurisdiction of its courts.

12. INTERPRETATION

Any reference in these Conditions to a word or expression used in the attached quotation will have the same meaning as in the Quotation. In these Conditions, unless the context requires otherwise:

"Act of Insolvency" means the Customer is made bankrupt or a bankruptcy petition is presented against it or an administrator, liquidator, provisional liquidator or a receiver is appointed in respect of the Customer or an application is made for winding up or a winding up order is made in respect of the Customer; "Contract" means the agreement constituted by the Quotation and the Customer's order; "Contract Sum" means the total price specified in the Contract as may be adjusted from time to time in accordance with this Contract including, without limitation, the value of Variations performed by Downing Construction; "Variation" means an increase, decrease, omission, substitution or other change to the scope of the Works including, without limitation, those arising from:

(a) particular site conditions, including ground conditions, ground levels or site allowances, which prevail at the Site and which were not made known to Downing Construction by the Customer at the date Downing Construction gave its quotation or the Customer made its order (whichever is the earlier);

(b) the final dimensions or specifications relating to any part of the Works varying from those specified in Downing Construction's quotation as a consequence of the Customer providing incomplete, inadequate or incorrect specifications or information;

(c) any requirement that Downing Construction perform the Works outside normal working hours; and

(d) any enactment, repeal or amendment of applicable laws and regulations; "Works" means the works to be executed by Downing Construction in accordance with the Contract including, but not limited to the supply of goods, materials or services including any Variations.