

# Terms and Conditions – 1<sup>st</sup> Choice Fix

## 1. Application of Terms and Conditions

- 1.1. These terms and conditions apply to any contract between 1<sup>st</sup> Choice Fix and the Customer for the Services to be provided by 1<sup>st</sup> Choice Fix to the Customer.
- 1.2. These terms represent the entire agreement between 1<sup>st</sup> Choice Fix and the Customer for the Services and cannot be varied, waived or amended without express written consent of 1<sup>st</sup> Choice Fix.

## 2. Definitions

- 2.1. In these Terms, unless the context otherwise requires, the words and expressions used have the following meanings:

- (a) "1<sup>st</sup> Choice Fix" means 1st Choice Fix Pty Ltd ACN 648 559 862 whose details appear in Item 2 of the Reference Schedule.
- (b) "Business Days" means a day that is not:
  - i. A Saturday or Sunday; or
  - ii. A public holiday in Brisbane, Queensland.
- (c) "Contract" means a contract for Works and all attachments provided by 1<sup>st</sup> Choice Fix and accepted by the Customer.
- (d) "Contract Price" means the price stated in any Quote or Contract.
- (e) "Customer" means the person or entity receiving Services as identified in any Quote or Contract.
- (f) "Date of Completion" means the date the Works are completed by 1<sup>st</sup> Choice Fix apart from minor defects
- (g) "Deposit" means any sum stated in a Quote or Contract as being required to be paid prior to the provision of Services.
- (h) "GST" means any tax imposed by or through GST Legislation on supply.
- (i) "GST Legislation" means *A New Tax System (Goods and Services Tax) Act 1999* and any related legislated.
- (j) "Quote" means a quotation for the cost for the provision of the Services, including any Variation that may be made from time to time.
- (k) "Services" means any services supplied by 1<sup>st</sup> Choice Fix for or on behalf of the Customer and includes any advice or recommendations whether in writing or verbally by an employee, contractor or consultant of 1<sup>st</sup> Choice Fix, specifically including the Works.
- (l) "Site" means the site upon which the Works will take place.
- (m) "Terms" means these Terms and Conditions
- (n) "Variation" means any change, alteration or addition to the Works agreed between the Customer and 1<sup>st</sup> Choice Fix from time to time in accordance with clause 16 of these Terms.

- (o) "Works" means the works identified in any Quote or Contract.

## 3. Engagement for the Supply of Services and Works

- 3.1. Acceptance of a Quote or Contract by the Customer constitutes acceptance of the supply of Services by 1<sup>st</sup> Choice Fix to perform the Works and shall constitute acceptance of the Terms.
- 3.2. 1<sup>st</sup> Choice Fix reserves the right to withdraw any Quote prior to acceptance by the Customer in accordance with clause 3.4.
- 3.3. A Quote issued by 1<sup>st</sup> Choice Fix will only be valid for any period stated on the face of the document, or a period of thirty (30) days where no period is expressly stated.
- 3.4. Acceptance of a Quote can occur by:
  - (a) Signing and returning a copy of a Quote and/or Terms and/or the Contract;
  - (b) Giving written or verbal instructions to 1<sup>st</sup> Choice Fix accepting the Quote for the supply of Service and the Works; or
  - (c) Payment of a deposit.

## 4. Contractors Warranties

- 4.1. 1<sup>st</sup> Choice Fix warrants that Works will be carried out:
  - (a) in an appropriate and skilful way;
  - (b) with reasonable care and skill;
  - (c) with reasonable diligence; and
  - (d) in accordance with any plans and specifications (if any form part of the Quote or Contract).
- 4.2. Subject to clause 4.3, 1<sup>st</sup> Choice Fix warrants that all materials to be supplied for use in the works:
  - (a) will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and
  - (b) unless otherwise said in the Contract, will be new.
- 4.3. The warranty provided for in clause 4.2 above, will not apply where:
  - (a) The Customer has supplied the materials for the Works;
  - (b) An Architect engaged by the Customer directs the supply of materials for the Works;
  - (c) The Customer is responsible for nominating the materials for use in the Works and either;
    - i. There are no reasonable grounds for not using the materials; or
    - ii. There are reasonable grounds for not using the materials however the Customer insists on the said materials being used despite written advice to the contrary given to the Customer by 1<sup>st</sup> Choice Fix.
- 4.4. 1<sup>st</sup> Choice Fix warrants that the Works will be carried out in accordance with all relevant laws and legal requirements and to Australian standards.

## **5. Price**

- 5.1. Unless otherwise stated, all prices quoted by 1<sup>st</sup> Choice Fix are inclusive of Goods and Services Tax (GST).
- 5.2. The 1<sup>st</sup> Choice Fix warrants that the price quoted in any Quote or Contract has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Quote or Contract were issued (including information about the nature and the location of the Site).
- 5.3. Where any price in a Quote or Contract is determined as incorrect once 1<sup>st</sup> Choice Fix attends the Site, notice will be provided to the Customer, either in writing or verbally, of the updated price before any further Works are undertaken. The Customer's verbal consent to the updated price is sufficient.

## **6. Customer's Obligations and Acknowledgements**

- 6.1. The Customer is responsible for:
  - (a) providing all weather access to the Site as necessary to enable the performance of the Works;
  - (b) ensuring that 1<sup>st</sup> Choice Fix is not obstructed, interfered with or hindered whilst carrying out the works. The Customer must also take all reasonable steps to prevent others from obstructing, interfering with or hindering the 1<sup>st</sup> Choice Fix whilst carrying out the Works;
  - (c) if 1<sup>st</sup> Choice Fix is not supplying the materials, then supplying any materials necessary;
  - (d) providing instructions to the 1<sup>st</sup> Choice Fix in the selection of materials in a timely manner;
  - (e) ensuring that the Contract Price is paid to 1<sup>st</sup> Choice Fix in accordance with the Quote or Contract;
  - (f) paying the Deposit to 1<sup>st</sup> Choice Fix within two (2) Business Days of accepting a Quote or Contract (where requested by 1<sup>st</sup> Choice Fix).
- 6.2. The Customer acknowledges that:
  - (a) 1<sup>st</sup> Choice Fix cannot guarantee the suitability or durability of materials provided by the Customer; and
  - (b) where 1<sup>st</sup> Choice Fix is engaged for specific Work which is subsequently impacted by the work of other tradespersons, 1<sup>st</sup> Choice Fix cannot guarantee:
    - i. the suitability or durability of the work conducted by another tradesperson (with or without suitable qualifications) as the other tradesperson may utilise differing materials or techniques that may or may not impact the materials used by 1<sup>st</sup> Choice Fix; or
    - ii. the suitability or durability of the Works where any preparation or works subsequent have been conducted by another tradesperson (with or without suitable qualifications) as the other tradesperson may utilise differing

materials or techniques that may or may not impact the materials used by 1<sup>st</sup> Choice Fix.

## **7. Insurance**

- 7.1. 1<sup>st</sup> Choice Fix must obtain and maintain all necessary policies of insurance required to be affected by 1<sup>st</sup> Choice Fix in accordance with any legislation.
- 7.2. At their own cost, the Customer must obtain and maintain public liability and home or building and contents insurances during the course of the provision of Services by 1<sup>st</sup> Choice Fix.

## **8. Payment**

- 8.1. Payment for Services must be made on conclusion of the provision of Services by 1<sup>st</sup> Choice Fix or in line with any prior agreed terms detailed in any Quote or Contract.
- 8.2. Payment can be made by direct deposit, or by such other method as indicated on any Tax Invoice, Quote or Contract issued by 1<sup>st</sup> Choice Fix to the Customer.
- 8.3. Where advised by 1<sup>st</sup> Choice Fix in any Quote or Contract that Progress Claims are to apply, such progress claims will be calculated by reference to the following:
  - (a) In accordance with the percentages set out in any quote or Contract by reference to the stage of Works completed;
  - (b) Be varied by any adjustment to the Contract Price as agreed from time to time in writing; and
  - (c) Be increased by any other amount due and owing to 1<sup>st</sup> Choice Fix by the Customer.
- 8.4. All Progress Claims must be paid within the period contained in in a subsequently issued Tax Invoice.

## **9. Payment Default**

- 9.1. Notwithstanding any other clause in these Terms, 1<sup>st</sup> Choice Fix reserves the right to suspend the provision of Services in the event of non-payment or dishonoured payment by the Customer.
- 9.2. 1<sup>st</sup> Choice Fix will not be liable for any loss or damage sustained whatsoever by the Customer as a result of suspension of Services for non-payment.
- 9.3. The Customer agrees to pay any costs and expenses of 1<sup>st</sup> Choice Fix in enforcing these Terms, including legal fees on an indemnity basis.
- 9.4. Without limitation to 1<sup>st</sup> Choice Fix's others rights or remedies, 1<sup>st</sup> Choice Fix may elect to charge interest, and the Customer agrees to pay that interest on all overdue amounts at the rate of 10% per annum.

## **10. Cancellation**

- 10.1. If the Customer wishes to cancel the intended provision of Services by 1<sup>st</sup> Choice Fix, the Customer must notify 1<sup>st</sup> Choice Fix no less than seven (7) days prior to the scheduled Commencement Date.
- 10.2. In the event the Customer seeks to cancel the Contract pursuant to this clause 10, 1<sup>st</sup> Choice Fix will be entitled

to payment for any reasonable expenses incurred by 1<sup>st</sup> Choice Fix deductible from any deposit or other monies paid in respect to the provision of Services. 1<sup>st</sup> Choice Fix will promptly refund any surplus monies paid by the Customer to 1<sup>st</sup> Choice Fix.

10.3. If the Customer does not provide sufficient notice of cancellation to 1<sup>st</sup> Choice Fix, in addition to any amounts under clause 10.2, a \$50.00 administrative surcharge will apply and may be deducted from any monies paid by the Customer to 1<sup>st</sup> Choice Fix.

## **11. Termination**

11.1. Without prejudice to any other remedies at law, 1<sup>st</sup> Choice Fix will be entitled to terminate the provision of Services in the event:

- (a) Breach of clause 8;
- (b) That in 1<sup>st</sup> Choice Fix's opinion it will not be able to continue to meet the requirements and expectations of the Customer;
- (c) That in 1<sup>st</sup> Choice Fix's opinion the Customer will be unable to meet its future payment obligations as and when they fall due;
- (d) The Customer becomes bankrupt, insolvent, convenes a meeting with its creditors or proposes to enter into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
- (e) The Customer fails to approve any Variations that are required to be undertaken in order for 1<sup>st</sup> Choice Fix to undertake the Works;
- (f) 1<sup>st</sup> Choice Fix is provided with actual knowledge and evidence that the Customer ceases to have authority to allow the Works to be undertaken on the Site.

11.2. It is understood and acknowledged by the Customer that 1<sup>st</sup> Choice Fix should not be liable for any loss or damage sustained whatsoever by the Customer, consequential or otherwise, as a result of termination of the Services, no matter the circumstances or causes for the termination, whether or not such is due to actions, negligence or otherwise taken by 1<sup>st</sup> Choice Fix and the Customer indemnifies 1<sup>st</sup> Choice Fix in relation thereto.

11.3. In the event 1<sup>st</sup> Choice Fix fails to comply with its obligations or provide the Works under this Contract, the Customer must give a notice to remedy to 1<sup>st</sup> Choice Fix, allowing 1<sup>st</sup> Choice Fix fourteen (14) days to fulfil any outstanding Works.

11.4. Should 1<sup>st</sup> Choice Fix fail to comply with the notice issued by the Customer under sub-clause 3 above, the Customer may terminate engagement of 1<sup>st</sup> Choice Fix but will be liable for that proportion of the Services provided by 1<sup>st</sup> Choice Fix up to the date of termination.

## **12. Guarantee and Indemnity from Customer**

12.1. The Customer warrants and guarantees to 1<sup>st</sup> Choice Fix that the Customer is authorised to deal with the

Site and will engage and provide instructions to the Contactor.

12.2. Before the provision of the Works, the Customer will fully disclose any dangerous or hazardous items known to the Customer, where upon 1<sup>st</sup> Choice Fix may in its sole discretion accept or decline to proceed with the Works.

12.3. It is understood and acknowledged by the Customer that 1<sup>st</sup> Choice Fix will not be liable for any loss or damage sustained whatsoever to the Site or any claims as a result of the provision of the Works and the Customer further indemnifies 1<sup>st</sup> Choice Fix from and against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on an indemnity basis) resulting from the Customers actions, instructions, or inaction under this Contract.

12.4. It is understood and acknowledged by the Customer that 1<sup>st</sup> Choice Fix will not be liable for any loss, damage, fine or penalty sustained whatsoever should the Customer do any act or thing contrary to the advice given by 1<sup>st</sup> Choice Fix.

## **13. Risk Assessment**

13.1. All Works will be subject to a risk assessment. If the Customer knows of any particular risk associated with the Site, then the Customer must inform 1<sup>st</sup> Choice Fix accordingly.

13.2. The Customer acknowledges that hazardous or suspected hazardous substances may be discovered on the Site in course of carrying out the works by 1<sup>st</sup> Choice Fix which could not have been reasonably anticipated and that the presence of such substances are not the responsibility of 1<sup>st</sup> Choice Fix. The Customer agrees that the discovery of any such substances may constitute a Variation to the Works.

## **14. No Set-Off or Deduction**

14.1. The Customer acknowledges that the whole price (including any Progress Payments) is payable in full and the Customer will have no entitlement to any deduction or set-off against 1<sup>st</sup> Choice Fix arising from any dissatisfaction or any perceived or actual counterclaim that the Customer may have against 1<sup>st</sup> Choice Fix.

14.2. Despite Clause 14.1 above, 1<sup>st</sup> Choice Fix agrees to reduce the price if a panel is damaged during the provision of Works only in so far as to charge no cost for Works to that associated damaged panel. This subclause 14.2 gives no right to the Customer for any further deduction to the price for replacement or repair costs.

## **15. Exclusion of Liability for Delay**

15.1. Despite any quoted timeframe for completion of the Works by 1<sup>st</sup> Choice Fix, 1<sup>st</sup> Choice Fix is entitled to claim a reasonable extension of such quoted timeframe where there is a delay that is:

- (a) Not reasonably foreseeable and beyond the reasonable control of 1<sup>st</sup> Choice Fix; or
- (b) Contributed to or caused by the Customer; or
- (c) Caused by a Variation to the Contract.

15.2. Despite the entitlement to an extension under clause 15.1, 1<sup>st</sup> Choice Fix will take all reasonable steps to complete the Works as soon as possible.

15.3. 1<sup>st</sup> Choice Fix will not be liable and the Customer hereby indemnifies 1<sup>st</sup> Choice Fix against any loss or damages suffered by the Customer due to any delay identified in clause 15.1 above.

15.4. Where 1<sup>st</sup> Choice Fix intends to claim for an extension of time to complete the Works, 1<sup>st</sup> Choice Fix must claim the extension in writing to the Customer within ten (10) Business Days of when 1<sup>st</sup> Choice Fix:

- (a) becomes aware of the cause and extent of the delay; or
- (b) ought to have become aware of the cause and extent of the delay.

## **16. Variations**

16.1. The parties agree that the following will constitute a Variation:

- (a) additional Services or Works to be carried out which were not contained in the Quote, Contract or any other prior Variation;
- (b) Services or Works that were unknown and unable to be quoted upon at the time of the Quote or Contract as a result of any unforeseen or latent aspects of the Services which did not arise or were not identifiable until full and unfettered provision of access to the Site was provided to 1<sup>st</sup> Choice Fix; and
- (c) Altering the design and production requirements for Works.

16.2. 1<sup>st</sup> Choice Fix and the Customer agree that any change to the Works specified in any Quote or Contract will constitute a Variation.

16.3. In the event the Customer requires any Variation to be made, the Customer agrees to accept a variation document specifying:

- (a) the updated Works to be completed;
- (b) the date of the request for the Variation;
- (c) if the Variation will result in a delay affecting the Works, 1<sup>st</sup> Choice Fix's reasonable estimate for the period of delay;
- (d) the amended price to be paid (if any) and when such price variation is due to be paid or otherwise accounted for.

16.4. The variation document above mentioned must be accepted by the Customer, either in writing or verbally, prior to the commencement of the additional Works requested.

## **17. Commencement and Performance of the Works**

17.1. 1<sup>st</sup> Choice Fix will commence the provision of Services to complete the Works at a time agreed with the Customer or as stated in any Quote or Contract.

17.2. 1<sup>st</sup> Choice Fix will carry out the Works with due care and skill and will not delay, suspend or fail to maintain reasonable progress of the Works unless otherwise provided for in these Terms.

17.3. 1<sup>st</sup> Choice Fix will act with due care and diligence to minimise risk of damage to the Site or to the Customer's property, and, without limiting Clause 12.3 above, the Customer accepts that 1<sup>st</sup> Choice Fix will not be liable for any damage, including repair or replacement costs, caused to the Site or the Customer's property, specifically including but not limited to glass panels, by 1<sup>st</sup> Choice Fix in provision of Works.

17.4. The Customer acknowledges that 1<sup>st</sup> Choice Fix can only get 10mm close to the edge of surfaces and 1<sup>st</sup> Choice Fix will use its best endeavours to polish and lighten scratches within 10mm of the edge of surfaces.

## **18. Completion of Services**

18.1. 1<sup>st</sup> Choice Fix will complete the provision of Services as soon as reasonably practicable after they are commenced.

18.2. The Customer cannot hold 1<sup>st</sup> Choice Fix liable for any consequential loss or damage suffered by the Customer as a result of reliance on any timeframe for the Works to reach a Date of Completion unless date has been guaranteed in writing by 1<sup>st</sup> Choice Fix.

18.3. If the Customer asserts that there are Defects in the Works, the Customer will provide to 1<sup>st</sup> Choice Fix a defects document listing all relevant defects in the Works.

18.4. To avoid doubt, the Customer is not entitled to retain any part of the Contract Price due to any defect.

18.5. Subject to the Customer providing suitable access to the Site to inspect the Works, 1<sup>st</sup> Choice Fix will attend the Site within three (3) weeks of receiving a Defect Notice to inspect the works. 1<sup>st</sup> Choice Fix will be afforded four (4) weeks following the inspection to rectify any defects where identified by the Customer and accepted as defects by 1<sup>st</sup> Choice Fix.

18.6. 1<sup>st</sup> Choice Fix is not required to rectify defects that have arisen due to poor quality or inferior workmanship or materials used to prepare any surface where such preparation was not conducted by 1<sup>st</sup> Choice Fix or was conducted by 1<sup>st</sup> Choice Fix but under the instructions of the Customer against advice provided by 1<sup>st</sup> Choice Fix.

## **19. Product Warranties**

19.1. Subject to any guarantees that cannot be excluded under the Australian consumer laws, 1<sup>st</sup> Choice Fix may provide express guarantees or warranties on the Services and/or Works provided to the Customer. Such guarantees or warranties will be detailed in a Quote or Contract for the benefit of the Customer.

## **20. Special conditions**

20.1. Any special conditions detailed in any Quote or Contract shall prevail over the Terms to the extent of any inconsistency.

## **21. Notices**

21.1. Notices under these Terms must be in writing.

21.2. Notices are effectively given if:

(a) Delivered or posted to the other party to the address last notified by that party; and

(b) Sent to the email address of the other party.

21.3. Posted notices will be treated as given four (4) Business Days after posting.

21.4. Notices sent by email will be treated as given when the email appears in the senders sent items provided that a notification is not received by the sender thereafter stating that the email was "undeliverable".

21.5. Notices given after 5:00pm will be treated as given on the next Business Day.

## **22. Privity of Contract**

22.1. The Customer cannot and must not assign or attempt to assign any of its rights or obligations under these Terms without first obtaining the approval of 1<sup>st</sup> Choice Fix in writing, which may be refused and/or withheld at the sole discretion of 1<sup>st</sup> Choice Fix.

## **23. Jurisdiction**

23.1. These terms are governed by the laws of Queensland for the purposes of their interpretation and application of those terms.

## **24. Severability**

24.1. If any part or all of the clause of these Terms are deemed void the legal or unenforceable if any part or clause may be severed from the terms without affecting the enforceability of the remaining clauses of the Terms.

## **25. Interpretation**

25.1. Reference to:

(a) the singular includes the plural and the plural includes the singular;

(b) one gender includes each other gender;

(c) a person includes a body corporate; and

(d) a party includes the party's executors, administrators, successors and permitted assigns.

25.2. If a party consists of more than one person, these Terms binds each of them separately and any two or more of them jointly.

25.3. An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.

25.4. Reference to statutes includes all statutes amending, consolidating or replacing them.

25.5. Headings are for convenience only and do not form part of this contract or affect its interpretation

## **26. Electronic Execution of Documents**

26.1. The parties hereby agree and consent to the giving, sending and receiving of documents and information including, but not limited to, the provision of these Terms by electronic transmission pursuant to Section 11 and Section 12 of the *Electronic Transactions (Queensland) Act 2001* (Qld).