

# Geraldton Brick Pty Ltd

ABN 75 131 069 479

## TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- (a) **“Geraldton Brick”** means Geraldton Brick Pty Ltd ABN 75 131 069 479, and includes its subsidiaries, related companies, trusts, agents, employees, franchisees, and subcontractors.
- (b) **“Customer”** means any person or entity, or group of persons or entities (including partnerships, joint ventures, and other forms of association) contracting with Geraldton Brick for the supply of Goods or Services under these Terms, and where the Goods or Services are provided as a result of an insurance claim, the Insurer.
- (c) **“Due Date”** means, in respect of each Invoice, the date that is 7 days after the invoice date, or such other date agreed in writing by a director of, or the principal of Geraldton Brick.
- (d) **“Event of Default”** means an event specified in clause 12.
- (e) **“Goods”** means Goods and/or materials provided to the Customer by Geraldton Brick including but not limited to:
  - (1) All goods and products supplied by Geraldton Brick
  - (2) All goods identified in any Invoice provided to the Customer by Geraldton Brick
  - (3) All goods marked as having been supplied by Geraldton Brick.
- (f) **“Insurer”** means an insurer that provides an insurance policy to the Customer under which Goods or Services may be paid for, either in whole or in part.
- (g) **“Invoice”** means an invoice issued by Geraldton Brick to the Customer.
- (h) **“Property”** means any land owned by the Customer.
- (i) **“Quote”** means a quotation from Geraldton Brick to the Customer for the supply of Goods and/or Services.
- (j) **“Services”** means services provided to the Customer by Geraldton Brick and includes, without limitation, labour, hire, design, and transport services.
- (k) **“Terms”** means these terms and conditions.

### 2. CONSUMER PROTECTION LEGISLATION

All warranties, terms and conditions implied into these Terms in favour of the Customer by operation of the Consumer and Competition Act 2010 (Cth) or any Fair Trading Act of any of the Australian States or Territories, and any other protection afforded to the Customer under such legislation are excluded to the greatest extent allowed by law.

### 3. OFFER AND ACCEPTANCE

- (a) Any requests from the Customer to Geraldton Brick for the supply of Goods or Services however made shall constitute acceptance of these Terms for the purposes of that request and all future dealings between Geraldton Brick and the Customer, and once accepted these Terms may only be altered or revoked with the written consent of Geraldton Brick.
- (b) Where the Customer is a group of persons or entities, each member of that group shall be jointly and severally liable to Geraldton Brick in respect of any supply of Goods or Services made.

### 4. PRICE

- (a) The price the Customer must pay to Geraldton Brick for the provision of Goods or Services will be as agreed between the Customer and Geraldton Brick, subject to clauses 4(b) to 4(g) of these Terms.
- (b) Unless otherwise agreed, any Quote for the supply of Goods or Services will remain valid and on foot for acceptance for 30 days from the date of the Quote, unless it is withdrawn by Geraldton Brick or refused by the Customer.
- (c) Geraldton Brick may amend a Quote at any time before it is accepted, and in the event that the cost to Geraldton Brick of materials or services to be supplied or used under a Quote increases may vary that Quote at any time before delivery of the Goods or Services the subject of the Quote.
- (d) In the event that no price for the provision of Goods or Services is agreed, whether by acceptance of a Quote or otherwise, then the price will be as stated in Geraldton Brick's price lists current at the date of supply.
- (e) The parties may vary the scope of an order or the price to be paid for Goods or Services by agreement, and Geraldton Brick will invoice the supply of the Goods or Services according to the agreed variation.
- (f) If any materials specified in any quote are not available when required by Geraldton Brick, then Geraldton Brick may, with the consent of the Customer, supply a substitute material of a similar nature and quality and the Customer shall not unreasonably withhold consent. Any variation in cost arising from the use of substitute materials shall be given to the Customer or where additional site visits are required as a result of delays caused by the Customer or where the Customer has not accurately provided all required information to Geraldton Brick.
- (g) GST will apply to all Goods sold and Services supplied by Geraldton Brick.

### 5. PAYMENT TERMS

- (a) The Customer agrees to pay Geraldton Brick, the price of the Goods or Services, within the agreed time for payment in accordance with the provisions in these Terms.
- (b) Geraldton Brick may in its sole discretion and at any time whether prior to or during supply of Goods or Services require the Customer to pay a deposit. Geraldton Brick will be under no obligation to supply Goods or Services until payment of that deposit.
- (c) Payment to Geraldton Brick must be made by cash, bank cheque, direct deposit, or credit card (plus a surcharge of up to 2.5% of the transaction price), or by any other method as agreed to between the Customer and Geraldton Brick.

### 6. DELIVERY OF THE GOODS

- (a) At the sole discretion of Geraldton Brick, delivery of the Goods shall take place when:
  - (1) the Customer takes possession of the Goods at Geraldton Brick's address; or
  - (2) the Customer takes possession of the Goods at the Customers' nominated address (in the event that the Goods are delivered by Geraldton Brick);
  - (3) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent; or
  - (4) the Goods are delivered to a third party nominated by the Customer for that purpose.
- (b) At the sole discretion of Geraldton Brick, the costs of delivery may be:
  - (1) included in the price payable by the Customer; or
  - (2) in addition to the price and charged to the Customer or the Customer's account.
- (c) The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged, then Geraldton Brick shall be entitled to charge a reasonable fee for redelivery.
- (d) Geraldton Brick may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with these Terms.
- (e) The failure of Geraldton Brick to deliver shall not entitle either party to treat this contract as repudiated.
- (f) Geraldton Brick shall not be liable for any loss or damage whatsoever due to failure by Geraldton Brick to deliver the Goods (or any of them) promptly or at all or in accordance with the Customer's instructions, where such misdelivery or failure is due to circumstances beyond the control of Geraldton Brick.

### 7. RISK

- (a) Notwithstanding clause 8 of these Terms, all risk passes to the Buyer upon delivery. If any Goods are damaged or destroyed prior to title in them passing to the Buyer, Geraldton Brick is entitled, without prejudice to any of its other rights and remedies under these Terms, to any insurance proceeds payable for the Goods.

### 8. RETENTION OF TITLE

- (a) Ownership, property, and title in all Goods shall remain with Geraldton Brick until the Customer has paid all monies owing to Geraldton Brick for all Goods and Services provided.
- (b) Goods shall be kept separate and clearly identifiable as property of Geraldton Brick until property in the Goods has passed to the Customer.
- (c) Until such time as property in Goods passes to the Customer, the Customer shall hold the Goods as bailee for Geraldton Brick, and hereby assigns to Geraldton Brick all legal and equitable right and title to the proceeds of the sale of the Goods (including so much of any consideration received for work done in course of which Goods are used as equals the total of all amounts owed by the Customer).
- (d) Geraldton Brick may request in writing that the Customer return the Goods or any part of them at any time until Property in the Goods has passed to the Customer.
- (e) Should the Customer fail to return the Goods to Geraldton Brick upon such notice being given, Geraldton Brick may, without prejudice to any of its other rights and remedies under these Terms, enter the Customer's premises or any other premises where the Goods may be stored, by servants or agents for the purpose of recovering or re-selling the Goods, and any cost incurred as a result of such action will be the responsibility of the Customer.

### 9. NOTIFICATION OF DEFECTS

- (a) The Customer must notify Geraldton Brick of any defect in Goods or Services supplied within 7 days of their delivery or supply, as the case may be, and allow Geraldton Brick to inspect the allegedly defective Goods or any evidence of the defective nature of such Services, at any reasonable time.

- (b) If the Customer fails to notify a defect in accordance with clause 9(a) of these Terms, the Goods and Services will be deemed to comply with the Customer's specifications and to be free of any defect.

#### 10. RETURNS

- (a) Subject to clauses 10(c) and 10(d) of these Terms, returns will only be accepted if:
  - (1) the Customer has complied with the provisions of clause 9; and
  - (2) Geraldton Brick has agreed in writing to accept the return of the Goods; and
  - (3) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (4) The Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- (b) Geraldton Brick will not be liable for, or be obliged to accept the return of, Goods which have not been stored or used in a proper manner.
- (c) Geraldton Brick may (at its sole discretion) accept the return of Goods for credit, but will be entitled to charge a handling fee of up to twenty percent 20% of the value of the returned Goods, plus any freight costs.
- (d) Geraldton Brick will not under any circumstances be liable to accept the return, for credit or otherwise, of Goods of a kind it does not ordinarily stock and ordered to the Customer's specifications.

#### 11. EXCLUSION OF WARRANTIES AND LIABILITY

- (a) Without derogating from clause 2 of these Terms, and to the greatest extent permitted by law, no warranty is given by Geraldton Brick as to the quality or suitability of Goods for any purpose, and any implied warranty is expressly excluded.
- (b) Geraldton Brick shall not be responsible for any loss or damage to Goods or caused by Goods, or any part thereof, however arising.
- (c) For Goods not manufactured by Geraldton Brick, the warranty shall be the current warranty provided by the manufacturer of the Goods. Geraldton Brick shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- (d) Geraldton Brick's liability to the Customer for any reason related to the performance of Goods or Services supplied under this agreement shall be limited to the amount paid by the Customer to Geraldton Brick for those Goods or Services.

#### 12. DEFAULT

The following events shall constitute an Event of Default by the Customer:

- (a) The failure of the Customer to make payment for the Goods by the Due Date or the intimation by the Customer that it will not pay any sum by the Due Date.
- (b) The Customer enters into an agreement for the sale or proposed sale of its business or assets, without first notifying Geraldton Brick.
- (c) The Customer commits a breach of any of these Terms and in the event that such breach is capable of remedy, the Customer fails to remedy the breach upon receiving notice from Geraldton Brick specifying the breach and requiring that it be remedied within seven (7) days of such notice; and
- (d) Any money payable to Geraldton Brick becomes overdue.
- (e) Geraldton Brick forms the opinion on reasonable grounds that the Customer will be unable to pay its debts as and when they fall due and owing.
- (f) The Customer becomes insolvent, convenes a meeting with its creditors, or proposes or enters into an arrangement with its creditors for compromise or rescheduling of its indebtedness.
- (g) The Customer makes an assignment for the benefit of its creditors.
- (h) The Customer being a natural person appoints a controlling trustee or signs a personal insolvency agreement for the purposes of Part X of the *Bankruptcy Act 1966* (Cth), or becomes bankrupt, or being a corporation suffers the appointment of a managing controller, a receiver, or a receiver and manager, or enters voluntary administration or executes a deed of company arrangement pursuant to Part 5.3A of the *Corporations Act 2001*, or enters liquidation whether voluntarily or involuntarily.

#### 13. CONSEQUENCES OF DEFAULT

- (a) Upon the occurrence of an Event of Default, any amounts currently outstanding shall become immediately due and the Due Date for all amounts shall be deemed to be the earlier of the actual Due Date or the date that the Event of the Default occurs.
- (b) 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 the discretion of Geraldton Brick, such interest shall compound monthly at such a rate) after as well as before any judgment.
- (c) In the event that any payment made by the Customer is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Geraldton Brick.

- (d) If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Geraldton Brick from and against, legal costs on an own client basis and collection agency costs.
- (e) Without prejudice to any other remedies Geraldton Brick may have, if at any time the Customer is in breach of any obligation, including those relating to payment, Geraldton Brick may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms. Geraldton Brick will not be liable to the buyer for any loss or damage the Customer suffers because Geraldton Brick has exercised its rights under this clause.
- (f) If any account remains overdue after thirty (30) days then an amount of the greater of ten dollars (\$10) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200)) shall be levied, each month thereafter the account remains unpaid, for administration fees, which sum shall become immediately due and payable.

#### 14. REGISTERED SECURITY

The Customer hereby charges in favour of Geraldton Brick all its estate and interest in any land and in any other assets, whether tangible or intangible, in which it now has any legal or beneficial interest or in which it later acquires any such interest, with payment of all monies owed by the Customer, and consents to the lodging by Geraldton Brick of a caveat or caveats or a PPSA security interest which note its interests in that property.

#### 15. CANCELLATION AND WITHDRAWAL OF ORDERS

- (a) The Customer may not defer or cancel an order once accepted by Geraldton Brick or once a Quote has been accepted, without the written consent of Geraldton Brick, and any such cancellation or deferment will have no effect until seven days (7) after Geraldton Brick has given its consent.
- (b) The Customer shall be responsible for and agrees to indemnify Geraldton Brick for all costs incurred by Geraldton Brick as a result of:
  - (1) the Customer cancelling an order; or
  - (2) the suspension of the provision of Goods or Services as a result of the occurrence of an Event of Default.
- (c) In the event that the provision of Goods and/or Services to the Customer is cancelled, suspended or terminated for any reason Geraldton Brick shall have no responsibility whatsoever for any loss or damage of any kind which may result directly or indirectly from such cancellation or suspension or from any recovery of Goods pursuant to the provisions of these Terms.

#### 16. INTELLECTUAL PROPERTY

- (a) Where any designs or specifications have been supplied by the Customer for manufacture by Geraldton Brick, the Customer warrants that the use of those designs or specifications for the manufacture, assembly or supply of the Goods/Services shall not infringe the rights of any third party.
- (b) Where Geraldton Brick produces any design, pattern, or specification during the manufacture of the Goods, all intellectual property rights (including but not limited to copyright or design rights) in them remain with Geraldton Brick, and such design, pattern, or specification may only be reproduced or copied with Geraldton Brick's written consent.

#### 17. UNPAID SELLER'S RIGHTS

- (a) If payment has not been received by Geraldton Brick when Due, and Geraldton Brick has made a verbal or written demand for payment, and the goods are in possession or control of Geraldton Brick, then Geraldton Brick reserves the right to dispose of the Goods and claim from the Customer any loss arising as a result of such disposal.
- (b) At the sole discretion of Geraldton Brick, storage costs may be incurred for any Goods which remain uncollected at the premises of Geraldton Brick, for a period of more than seven (7) days after the agreed date for collection.

#### 18. PERSONAL PROPERTY SECURITIES ACT 2009

- (a) Security: the Customer acknowledges and agrees that by assenting to these Terms, it grants a security interest (by virtue of clauses 8 and 14 of these terms), to Geraldton Brick in all Goods previously supplied by Geraldton Brick to the Customer (if any), and all after-acquired Goods supplied by Geraldton Brick to the Customer (or for the Customer's account).
- (b) Financing statement: the Customer undertakes to sign any further documents and/or provide any further information (which information it warrants to be complete, accurate and up-to-date in all respects) which Geraldton Brick may reasonably require to enable registration of a financing statement or financing change statement on the Personal Properties Securities Register.

#### 19. ASSIGNMENTS OF RIGHTS

- (a) Geraldton Brick shall be entitled at any time and without the Customer's consent to:
  - (1) sub-contract any obligation under these Terms; or
  - (2) assign its rights under these Terms to its successors, or nominated transferees or assigns, (including but not limited to, and where applicable, any personal guarantee) and that these Terms shall not be in any way affected or discharged by such assignment.

#### 20. ENTIRE AGREEMENT AND WAIVER

- (a) Save as specifically and expressly contemplated in these Terms, no provision of these Terms shall be changed waived or modified without the express written agreement of Geraldton Brick.

- (b) These Terms embody the entire agreement of Geraldton Brick in respect of the ordering, supply, delivery of, and payment for, Goods or Services, and any order received from the Customer shall be deemed to incorporate these Terms, notwithstanding any purported change to the Terms specified by the Customer.
- (c) Any waiver or failure to execute any rights by Geraldton Brick shall not be deemed a waiver of any further or other right of Geraldton Brick in respect of the Customer.
- (d) The Customer shall not be entitled to rely upon any statement of any kind made by a person including a representative or agent of Geraldton Brick, which include a representative of any kind, which contradicts or is contrary to these Terms and Conditions.

**21. RELATIONSHIP**

Nothing in these Terms creates a joint venture, agency, or partnership or other fiduciary relationship between the parties.

**22. SEVERANCE**

Geraldton Brick and the Customer agree that:

- (a) all the provisions of these Terms are reasonable in all the circumstances and each provision is and will be deemed to be severable and independent; and
- (b) if any provision hereof is found by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions will not be affected and the invalid, illegal or unenforceable provision shall be severed from the document, it being the intention of the parties that had they known that such provision would be invalid, illegal or unenforceable in any respect they would have agreed upon and accepted the remaining Terms thereof.

**23. JURISDICTION**

- (a) This agreement shall be governed by and construed in accordance with the laws of the State in which Geraldton Brick is registered, or which it nominates.
- (b) The Customer submits to the jurisdiction of the courts of the State in which Geraldton Brick is registered, or which it nominates.

**24. GENERAL**

- (a) The Customer shall not be entitled to set off against, or deduct from moneys owing to Geraldton Brick, any sums owed or claimed to be owed to the Customer by Geraldton Brick, nor to withhold payment of any invoice because part of that invoice is in dispute.
- (b) The Customer agrees that Geraldton Brick may review these Terms at any time and if following any such review there is to be any change to these Terms, then that change will take effect from the date on which Geraldton Brick notifies the Customer of such change.
- (c) No party shall be liable for any breach of any provisions of these Terms arising from an act of God, natural disaster, terrorism, war or any other occurrence beyond the control of that party.

**25. MISCELLANEOUS NOTICES.**

All notices authorised or required to be made under these Terms and Conditions shall be sent by Facsimiles transmission, delivered personally or sent by prepaid mail and in each case shall be addressed to the party at the address provided herein or at such other address as each party may from time to time notify to the other parties. All notices shall be deemed to have been received the day they were sent except where sent by post that shall be deemed to have been received two (2) days after the date of posting and where sent by Facsimiles transmission upon receipt of the correct and complete transmission.