

Terms & Conditions

TERMS OF PURCHASE CONTRACT

1. Definitions

- a. The parties to this Contract are the parties named on the reverse side of this document;
- b. This Contract means both sides of this Purchase Contract document;
- c. The Goods are the materials described in 'Nature of the Works' appearing on the contract.
- d. Substantially installed means installation of the goods the subject of this contract (described as the 'Nature of the Works') except for minor defects and/or omissions;
- e. GST means the tax and other obligations imposed by A New Tax System (Goods and Services Tax) Act 1999 (Cth). The expressions contained in the Act where used in this Contract shall, except where expressly negated by the terms of this Contract, have the same meaning as the expressions defined in the Act. Any reference to the Act is deemed to be a reference to any delegated legislation and any applicable public rulings and/or determinations issued by the Commissioner of Taxation.

2. Scope

- a. Superior Jetties will manufacture and install, subject to the terms of this Contract, the goods described as the 'Nature of the Works' ("the works").

b. The work shall be performed by Superior Jetties in a proper and workmanlike manner and in accordance with the terms of this Contract.

3. Deposit

a. On execution of this Contract The Purchaser will pay to Superior Jetties a deposit in the sum stated in this Contract.

b. In the event that the Contract is terminated by The Purchaser, Superior Jetties will be entitled to retain the deposit. In this regard the parties acknowledge that the deposit represents a pre-estimate of the loss which may be suffered by Superior Jetties for the termination of the Contract and is not a penalty.

c. In the event that Superior Jetties is unable to obtain all the necessary approvals and consents for the work the subject of this Contract:

i. Superior Jetties will refund to The Purchaser the deposit less all application fees paid by Superior Jetties on The Purchaser's behalf, and all professional and administrative costs reasonably incurred in respect of preparing plans and documentation to support applications and submissions and pursuit of all applications; and, ii. If the amount of such application fees and associated costs incurred by Superior Jetties exceeds the amount of the deposit, then The Purchaser will pay any shortfall to Superior Jetties within 7 days of advice being made for such payment.

4. Balance of Contract Price

a. The Purchaser will pay 40% of the Contract price to Superior Jetties on the day that civil works and/or piling is substantially completed at the address of the works.

b. The Purchaser will pay the remaining 40% of the Contract price to Superior Jetties on the day the works are substantially installed at the address of the works. Where civil works and/or piling are not applicable, the 80% of the Contract price will be payable on the day the works are substantially completed at the address of the works.

c. A 1.5% additional fee will be applied to any amount other than the deposit that the Purchaser desires to pay by credit card.

d. The Purchaser is not entitled to retain any part of the balance of the Contract price on account of any Variation between the works described in the Contract and the installed works.

e. In the event that The Purchaser fails to pay the balance of the Contract price and any Variations in terms of this paragraph, The Purchaser agrees to pay to Superior Jetties in addition to the Contract price, interest on the unpaid amount at the rate of 20% per annum, compounding daily, on the whole balance then due and payable from the date the works are substantially installed until the date of full and final payment. In this event, The Purchaser is obligated to reimburse Superior Jetties any legal or collection costs incurred in obtaining full and final payment.

5. GST

Any additional sums payable by the Purchaser in terms of this Contract, including but without limiting the generality of the following – additional application fees or costs, costs in respect of latent conditions, interest or CPI increases associated with delays in obtaining approvals – shall be exclusive of GST. The Purchaser will be obliged to pay to Superior Jetties all amounts of GST applying to such additional sums.

6. Variation to the Contract Price

a. The Contract price is fixed for a period of three months from the date the Purchaser executes this Contract.

b. In the event that Superior Jetties is unable, without fault on its part, to obtain all the necessary approvals in a timely manner to complete the installation of the works, Superior Jetties will be entitled to increase the Contract price in the same proportion as movements in the Consumer Price Index (All Groups Brisbane) from the date that is three months after the Contract date, until the

date the works are substantially installed.

c. All Variations required to comply with any of the relevant approvals and those

Variations to the works as requested by The Purchaser will be charged as additional costs to the Contract price by Superior Jetties.

d. Superior Jetties requires the Variation to be agreed in writing between the parties and for The Purchaser to pay the full cost of the Variation at the time it is agreed. In cases of Force Majeur requiring Superior Jetties to proceed with any works to maintain the integrity and safety of any works, the Purchaser will be required to pay the costs incurred by Superior Jetties on completion

of those additional works.

7. Approvals

a. Superior Jetties will apply on the Purchaser's behalf for all required approvals with relevant information supplied by The Purchaser.

b. The obligation of Superior Jetties to manufacture and install the works is contingent on the approvals being granted.

c. Should it become necessary for Superior Jetties to make application for any approval not set out in this Contract in order

to lawfully install the goods, The Purchaser authorises Superior Jetties to make such application and the application fees and related costs incurred by Superior Jetties will be in addition to the Contract price.

d. In the event that required approvals are refused, or if in the reasonable opinion of Superior Jetties are unlikely to be approved, Superior Jetties may terminate this Contract by notice to the Purchaser. In this instance Paragraph 3.c. will apply.

8. Latent Conditions

a. In the event that Superior Jetties discovers after the execution of this Contract that the ground or shore conditions into which the works are to be installed differ materially from those reasonably ascertained on the inspection of the site prior to the execution of this Contract, or as advised by The Purchaser, Superior Jetties will advise The Purchaser in writing the amount by which the Contract price will increase and such amount will form part of the Contract price payable for the works in accordance with Clause 6 of this contract

.b. Superior Jetties will be entitled to increase the Contract price by the amount of the additional costs of installation incurred by or quoted by a sub-contractor to Superior Jetties arising from the uncertain ground or shore conditions and Superior Jetties will be entitled to apply margin to the quoted direct costs to cover overheads and administration and as detailed in Clause 6c above.

9. Termination by Superior Jetties

This Contract may be terminated by Superior Jetties at any time within six weeks of the Contract date by notice in writing to The Purchaser, in which event the Purchaser's deposit will be refunded in full.

10. Title and Risk

a. Superior Jetties retains title to the works installed until such time as The Purchaser has paid the whole of the Contract price.

b. In the event that The Purchaser does not pay Superior Jetties the whole of the Contract price strictly in terms of this Contract, The Purchaser authorises Superior Jetties to enter onto the site address and with necessary machinery, remove the goods without liability to The Purchaser with trespass, negligence or any obligation to pay compensation to The Purchaser.

c. In this event, all labour, material and equipment costs incurred in removal of the goods will be to The Purchaser's account and recoverable from The Purchaser by Superior Jetties.

d. Risk for the goods which are the subject of this contract passes to The Purchaser regardless of outstanding payments in part or in full as of the date of substantial installation.

II. Warranty

a. The Purchaser warrants that The Purchaser is the registered proprietor of the land described at the site address.

b. Superior Jetties warrants that the goods supplied pursuant to this Contract will be of merchantable quality.

c. Superior Jetties provides no warranty that the goods, once installed, will be suitable for any particular purpose or suitable for any particular vessel and further, are only designed and manufactured for domestic and noncommercial use.

d. The Purchaser warrants and agrees that The Purchaser has not relied on any representation made by Superior Jetties or its representative contrary to any matter or thing contained in this Contract nor any representation to the terms of which are not set out herein.

e. Superior Jetties will not be liable for any loss, damage, injury or claim by any person arising from the use of the goods supplied hereunder. The Purchaser indemnifies and holds Superior Jetties forever harmless in respect of any claim, suit or demand made by any person arising from any damage or personal injury caused by, through, or in connection with the use of the goods supplied hereunder.

12. Guarantee

a. Superior Jetties' liability for goods manufactured by it is limited to making good any defects by repairing the goods, or at Superior Jetties' option by replacement, within a period of twelve calendar months after the date the goods have been substantially installed provided that:

i. defects have arisen solely from faulty materials or workmanship;

ii. the goods have not received maltreatment, inattention and/or interference;

iii. accessories of any kind used by the purchaser are manufactured by or approved by Superior Jetties; and,

iv. the defective parts are notified to Superior Jetties within 30 days of being manifest.

b. If goods are not manufactured by Superior Jetties, the guarantee of the manufacturer thereof shall be accepted by the purchaser and is the only guarantee given to the purchaser in respect of the goods.

c. Superior Jetties shall not be liable for, and The Purchaser releases Superior Jetties from any claims in respect of faulty or defective design of any goods supplied, unless such design has been wholly prepared by Superior Jetties and the responsibility for any claim has been specifically accepted by Superior Jetties

in writing, and in any event Superior Jetties' liability hereunder shall be strictly limited to the replacement of defective parts in accordance with

paragraph (e) hereof.

d. Except as provided herein, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose, or as to the design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and Superior Jetties shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of Superior Jetties' negligence or in any way whatsoever.

e. Superior Jetties' liability for a breach of a condition or warranty implied by Div 2 of pt V of the Trade Practices Act 1974 (other than s 69) is hereby limited to:

i. in the case of goods, anyone or more of the following:

(1) the replacement of the goods or the supply of equivalent goods;

(2) the repair of the goods;

(3) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(4) the payment of the cost of having the goods repaired; or

ii. in the case of services:

(1) the supplying of the services again; or

(2) the payment of the cost of having the services supplied again.

f. Superior Jetties' liability under s. 74H of the Trade Practices Act 1975 is expressly limited to a liability to pay to The Purchaser an amount equal to:

i. the cost of replacing the goods;

ii. the cost of obtaining equivalent goods; or

iii. the cost of having the goods repaired, whichever is the lowest amount.

13. Notices

Notices to be given by either party shall be mailed or alternatively sent by facsimile or email, provided that in the case of a facsimile or email, the notice will only be considered to have been delivered if the sender of the notice retains an electronically generated confirmation of receipt.