



## TERMS & CONDITIONS

### STANDARD CONDITIONS OF QUOTATION

1.1 Unless otherwise expressly agreed in writing by East Coast Constructions Tas Pty Ltd, these conditions apply to any quotation given by East Coast Constructions Tas Pty Ltd and to any agreement for the supply of goods and/or the performance of work by East Coast Constructions Tas Pty Ltd.

1.2 It is expressly acknowledged and agreed that any order issued by the customer consequent upon or with reference to the attached quotation, Contract or Sale will be deemed to be an acceptance to purchase upon the terms stated on the attached Contract and these Conditions and Constitutes the entire agreement between East Coast Constructions Tas Pty Ltd and the Customer, any conditions contained in the customers order will not apply notwithstanding a statement to the contrary in the Customers Order.

### 2. QUOTATION

2.1 Subject to Clause 2.2, a quotation by East Coast Constructions Tas Pty Ltd remains open for 28 days from the dated stated on the relevant quote ("the Quotation will lapse if the Customer fails to make an order within that period")

2.2 East Coast Constructions Tas Pty Ltd may immediately withdraw a quotation prior to the expiration of 28 days or terminate the Contract without notice if the Customer does not in East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd may, in its absolute discretion, perform a Variation if it receives a written instruction from an employee or an agent of the customer to perform the variation for the customer.

3.2 The price payable for a variation performed by East Coast Constructions Tas Pty Ltd is to be determined in agreement between East Coast Constructions Tas Pty Ltd and the Customer within two business days after the written instruction under clause 3.1 is received by East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd 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" East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd the Contract Sum in accordance with Clause 4 and the terms of the customers credit account with East Coast Constructions Tas Pty Ltd (if any)

4.2 All Goods & Services Tax or 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 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 any such other payment.

4.3 All invoices are due to be paid in full after issue and within seven days of issue.

4.4 All Claims for payment are a claim under the Building & Constructions Industry Security Payment Act 2009.

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 counterclaim.

### 5. COMPLETION

5.1 The works are deemed to be complete when works are, in reasonable opinion of East Coast Constructions Tas Pty Ltd, fit for the purpose for which they were intended as reasonably determined by East Coast Constructions Tas Pty Ltd.

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. East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd including but not limited to, delays by East Coast Constructions Tas Pty Ltd suppliers or Sub Contractors, delays directly or indirectly caused by the customer, delay in giving East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd may be responsible:

- (a) The Estimated completion date will automatically be extended by a reasonable period as determined by East Coast Constructions Tas Pty Ltd, or
- (b) East Coast Constructions Tas Pty Ltd may terminate the Contract without any liability for breach of the Contract and East Coast Constructions Tas Pty Ltd will be entitled to a full payment for all works completed.

5.4 If the Customer caused East Coast Constructions Tas Pty Ltd any delay, the customer will indemnify East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd

(a) the site is clear, free of water, clean, safe, has uninterrupted direct access for employees and subcontractors of East Coast Constructions Tas Pty Ltd, 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 (East Coast Constructions Tas Pty Ltd)) are provided to enable East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd is to install the Works comply with East Coast Constructions Tas Pty Ltd specifications set out or attached to the Quotation.

6.2 East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd or if it commits an Act of Insolvency then East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd

### 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 East Coast Constructions Tas Pty Ltd will not be liable for any shortage in delivery or product damaged prior to delivery unless East Coast Constructions Tas Pty Ltd is notified within two days after the goods are delivered to site.

### 9. INSURANCE, RISK AND PROPERTY

9.1 Under Tasmanian Law East Coast Constructions Tas Pty Ltd have a Contract Works Insurance Policy which covers the Building for any event which may cause damage, fire or theft including a public liability policy until such time as completion has been reached and all certificates have been issued by relevant authorities with which the Customer will then be responsible for Building Insurance with an insurer of the Customers choosing.

### 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 East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd relating to the Works and warrants it has a right to use any drawings or other material it has provided to East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd may subcontract 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 East Coast Constructions Tas Pty Ltd

11.6 East Coast Constructions Tas Pty Ltd reserves the right to change the construction or design of any goods to be supplied under the Contract, if in its judgement it does not significantly affect the performance characteristics of those goods.

11.7 The Customer will not transfer or assign this Contract without East Coast Constructions Tas Pty Ltd written consent.

11.8 The Customer warrants it complies with the Building Act (2016) TASMANIA or, if applicable its equivalent in any other State of Australia.

11.9 Except as may be otherwise specified by East Coast Constructions Tas Pty Ltd, 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 East Coast Constructions Tas Pty Ltd; "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 East Coast Constructions Tas Pty Ltd by the Customer at the date East Coast Constructions Tas Pty Ltd 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 East Coast Constructions Tas Pty Ltd quotation as a consequence of the Customer providing incomplete, inadequate or incorrect specifications or information;

(c) any requirement that East Coast Constructions Tas to 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 East Coast Constructions Tas Pty Ltd in accordance with the Contract including, but not limited to the supply of goods, materials or services including any Variations.