



## FURLONG PAINTING PTY LTD STANDARD TERMS AND CONDITIONS

These are the Supplier's ("we" or "our") standard Terms and Conditions which will apply to every contract when you as the Client engage the Supplier to perform its Services.

### 1. DEFINITIONS

- 1.1 The Supplier is Furlong Painting Pty Ltd (ACN 154 136 245) of P.O. Box 4269, Knox City Centre, 3152 in the State of Victoria.
- 1.2 The Client is the party who has placed an Order for Services from the Supplier.
- 1.3 The Order is any written or verbal request to the Supplier by the Client for the provision of Services and includes the written or verbal acceptance of any Quotation for Services issued by the Supplier
- 1.4 The Services are the performance of painting and associated works by the Supplier to the Client.
- 1.5 Additional Services includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Services.
- 1.6 The Premises are the land or land and buildings where the Services are to be carried out.
- 1.7 The Price for the Services is the amount specified in any Quotation, verbal or written communication or Invoice to the Client
- 1.8 Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.9 Major failure is Services that are unsafe and/or substantially unfit for normal purpose and cannot reasonably be made fit within a reasonable time.
- 1.10 GST refers to Goods and Services Tax under the Goods and Services Act 1999 ("GST Act") and the terms used herein have meanings contained within the GST Act.

### 2. GENERAL

- 2.1 These Terms and Conditions together with any Order constitutes a valid binding and entire agreement between the Supplier and the Client and can only be amended by them in writing.
- 2.2 All prior discussions and negotiations are merged within this agreement and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with this agreement in any way.
- 2.3 These Terms and Conditions are binding on the Client, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4 In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 2.5 Where there is more than one Client then each of them shall be jointly and severally liable to the Supplier.
- 2.6 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable then the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 2.7 The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 2.8 The Client acknowledges that the Supplier may detail these Terms and Conditions on its website and those Terms and Conditions apply to any future dealings between the Client and the Supplier.
- 2.9 Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia.

### 3. QUOTATIONS & PLACEMENT OF ORDERS

- 3.1 Any written or verbal Quotation given by the Supplier shall expire thirty (30) days after the date of the Quotation.
- 3.2 Orders placed by the Client with the Supplier will be considered valid when placing the Order verbally and/or in writing or by signing or otherwise accepting the Quotation
- 3.3 All prices are based on taxes and statutory charges current at the time of the Quotation. Should these vary during the period from the date of the Quotation to the date of the Invoice, then the difference will become the responsibility of the Client and the Client will be invoiced for the extra charge by the Supplier.

### 4. PRICE

- 4.1 GST will be charged on the Services provided by the Supplier that attract GST at the applicable rate.
- 4.2 The Supplier reserves the right to change the Price in the event of a variation to the Client's Order, and notice of the change in Price will be provided in writing by the Supplier within a reasonable time.
- 4.3 At the discretion of the Supplier, all Orders may be subject to the payment of a deposit of up to fifty per cent (50%) of the Quotation Price or provide for periodic progress or 'interim' payments to be made at specified intervals or points in time without prejudice to any rights conferred to the Supplier by the Building and Construction Industry Security of Payments Act 2002 (Vic).

### 5. PROVISION OF SERVICES

- 5.1 The Supplier shall be entitled to exercise its discretion as to the most appropriate and effective manner of providing the Services and of satisfying the Client's expectations of those Services.
- 5.2 The Supplier will use its best endeavours to comply with all reasonable directions of the Client as to the nature and scope of the Services provided.
- 5.3 The Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Client. Unless otherwise specified the Services are provided during normal working hours (07:30 to 16:00 hours). Should the Client require work to be completed outside of, or safe access to the Premises is denied during normal working hours then additional charges may apply.
- 5.4 The Supplier may agree to provide Additional Services at the request from the Client and shall be entitled to make an additional charge.
- 5.5 The Client covenants that he is either the owner of the Premises or acting with authority of the owner and grants full access to the Supplier to the Premises, and any necessary essential services, resources, equipment, materials and information, to enable it to carry out the Services.
- 5.6 The Client shall supply water and/or electricity and toilet facilities adjacent to the work site at the Premises to enable provision of the Services at no costs to the Supplier.
- 5.7 The Supplier will not be held responsible for any delay due to inclement weather or failure of the Client to provide required access to the Premises or changes requested to be made by the Client and/or in any circumstances beyond the Supplier's reasonable control.
- 5.8 Other than those permits specified as being the responsibility of the Supplier, the Client is responsible to obtain all necessary permits and to mark out the site at the Premises for the provision of the Services.
- 5.9 The Supplier may license or sub-contract all or any part of its rights and obligations under this agreement without the Client's consent but the Supplier acknowledges that it remains at all times liable to the Client.

5.10 The Supplier warrants that it will maintain Public Liability Insurance cover for the provision of the Services with a maximum coverage of \$20,000,000 as well as a WorkCover certificate for eligible workers.

## **6. PAYMENT AND CREDIT POLICY**

- 6.1 Clients must pay the Price of the Services to the Supplier in full within 14 days of the date of the Invoice unless otherwise agreed in writing
- 6.2 Credit will only be granted at the sole discretion of the Supplier which may be revised by the Supplier at any time and at its discretion.
- 6.3 The Supplier reserves the right to withdraw any credit granted upon any breach by the Client of these Terms of Conditions or upon the Client ceasing to trade and/or being subject to any legal proceedings and/or committing an act of insolvency and all monies owing to the Supplier shall become immediately due and payable.
- 6.4 The Supplier may, in its discretion, calculate interest at the rate of eight per centum (8%) per annum on all monies overdue by Client to the Supplier to be compounded monthly.
- 6.5 If the Supplier does not receive payment of the Price when due under the Invoice or under any credit term granted by the Supplier then Supplier may without prejudice to any other remedy forward the Client's outstanding account to a debt collection agency or law firm for recovery and the Client shall be liable for the Supplier's costs of recovery as a liquidated debt.

## **7. RISK AND LIABILITY**

- 7.1 The Client will ensure that there is sufficient information provided to the Supplier to enable it to execute the Order and acknowledges that it is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order.
- 7.2 The Supplier takes no responsibility if the information or specifications supplied by the Client are wrong or inaccurate and the Client will be liable for any costs and expenses incurred by the Supplier for any work required to rectify the Services.
- 7.3 Unless otherwise advised, pre-existing toxic coatings such as lead and / or chromate based paints or asbestos based substrates may be subject to additional costs to prepare and / or remove.
- 7.4 The Client releases the Supplier from any direct, indirect, special or consequential loss or damages incurred as a result of any delay or failure to provide the Services or to observe any of these Terms and Conditions due to an event of force majeure or any cause or circumstance beyond the Supplier's reasonable control.
- 7.5 The Supplier does not represent that it will deliver any Services unless it is included in the Quote.
- 7.6 The Client indemnifies and agrees to keep the Supplier indemnified against any and all claims for direct, indirect and/or consequential damages or loss arising from or in connection with the provision of the Services including but not limited to any feature or condition of the Premises howsoever caused, whether or not any such feature or condition is reasonably obvious and/or whether the feature or condition is known or unknown to the Client or any of the Client's servants or agents.

## **8. WARRANTY**

- 8.1 The Supplier warrants that the rights and remedies to the Client for warranty against defects in the Services in these Terms and Conditions are in addition to other rights and remedies of the Client under any applicable Law in relation to the services to which the warranty relates.
- 8.2 The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia.

- 8.3 The Supplier warrants that if any defect in the Services provided by the Supplier becomes apparent and is reported to the Supplier within fourteen (14) days, the Supplier will remedy the defective Service.
- 8.4 The Supplier shall not be liable to compensate the Client for any reasonable delay in remedying the defective services or in assessing the Client's claim. The Client warrants that it shall use its best endeavours to assist the Supplier with identifying the nature of the defective service claim.
- 8.5 To the extent permitted by law, the Supplier's liability in respect of defective Services will be limited to:
- 8.5.1 The re-supply/rectification of the Services;
- 8.5.2 The payment of the cost of having the Services supplied again; or
- 8.5.3 The refund of the Price paid by the Client in respect of the Services.

## **9. TERMINATION AND CANCELLATION**

- 9.1 The Supplier may cancel any Order at any time before payment is made by the Client by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or indirect or consequential loss or damage whatever arising from such cancellation.
- 9.2 In the event the Order is subject to progress payments, the Supplier shall be entitled to suspend and/or cease the completion of the Order if the Client's progress payments are in arrears. The Supplier is entitled to recommence the provision of the Services once the arrears are cleared and the progress payments are up to date.
- 9.3 Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- 9.3.1. Any money payable to the Supplier becomes overdue; or
- 9.3.2. The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 9.3.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 9.4 Any Order cannot be cancelled by the Client unless expressly agreed to by the Supplier in writing.
- 9.5 In the event that the Client cancels the supply of the Services, the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

## **10. JURISDICTION**

- 10.1 The agreement between the Supplier and the Client shall be governed by the laws of the State of Victoria and the parties shall submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

## **11. PRIVACY ACT 1988**

- 11.1 The Client agrees;
- 11.1.1 For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Supplier.
- 11.1.2 That the Supplier may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency.
- 11.1.3 The Client consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).