

ScreedPro WA Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "ScreedPro" means ScreedPro WA Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of ScreedPro WA Pty Ltd.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting ScreedPro to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by ScreedPro to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between ScreedPro and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Cth.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and ScreedPro.
- 2.3 Any advice, recommendation, information, assistance or service provided by ScreedPro in relation to Materials or Works supplied is given in good faith, is based on ScreedPro's own knowledge and experience and shall be accepted without liability on the part of ScreedPro and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that ScreedPro shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by ScreedPro in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by ScreedPro in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of ScreedPro; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give ScreedPro not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by ScreedPro as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At ScreedPro's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by ScreedPro to the Client in respect of Works performed or Materials supplied; or
 - (b) ScreedPro's quoted Price (subject to clause 5.2) which shall be binding upon ScreedPro provided that the Client shall accept ScreedPro's quotation in writing within thirty (30) days and the actual Material quantities supplied and Operating Time as the same as the quoted or estimated Material quantities supplied and Operating Time; or
 - (c) ScreedPro's standard variable pricing (typically a staged Material price increase of \$20-\$30 per cubic meter for each cubic meter per load supplied less than 5 cubic meters per load and a staged Operating Time price increase of between \$20-\$30 per hour Operating Time depending on whether the Works are conducted on a weekday, weekend, night or public holiday) and based on actual Material quantities supplied and Operating Time in circumstances where the quoted or estimated volumes of Material and Operating Time differ from the actual delivered volumes of Material and Operating Time or where weekday Works were quoted but Works were actually conducted at weekends, nights or public holidays.
- 5.2 ScreedPro reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, hard rock barriers below the surface etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to ScreedPro in the cost of labour or materials which are beyond ScreedPro's control.
- 5.3 Unless agreed otherwise for fixed price supply, Invoices issued by ScreedPro will be based on actual quantities of Materials supplied and Operating Time including any pricing variations resulting from differences between the estimated or quoted Materials and Operating Time and the actual.
- 5.4 Unless a quote is specifically stated as being a fixed price, lump sum, quote, all quotes and estimates supplied by ScreedPro are non-binding estimates only to assist the Client in budgeting, based on the estimated quantities of Material and time on site advised by the Client. Clients are strongly advised to include a buffer in their budgets for variations between the actual and estimated Material quantities and Operating Time or for circumstances where Works were initially planned and estimated as lower Price full loads or weekday Works but actually conducted as higher Price part loads or weekend, night or public holiday Works.

ScreedPro WA Pty Ltd – Terms & Conditions of Trade

- 5.5 ScreedPro shall clearly state on invoices issued the actual quantity of Materials supplied and Operating Time applicable and the relevant Price to enable clear identification and will be detailed in writing on ScreedPro's invoice. The Client shall be required to respond to any variation from any estimated or quoted Price submitted by ScreedPro within ten (10) working days. Failure to do so will entitle ScreedPro to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.6 At ScreedPro's sole discretion a non-refundable deposit may be required.
- 5.7 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by ScreedPro, which may be:
- (a) on completion of the Works each day; or
 - (b) by way of progress payments in accordance with ScreedPro's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (c) for certain approved Clients, thirty (30) days following the date specified on any invoice or other form as being the date for payment; or
 - (d) six (6) days following the date specified on any invoice or other form as being the date for payment; or
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by ScreedPro.
- 5.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and ScreedPro.
- 5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by ScreedPro nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to ScreedPro an amount equal to any GST ScreedPro must pay for any supply by ScreedPro under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of the Works

- 6.1 Subject to clause 6.2 it is ScreedPro's responsibility to ensure that the Works start as soon as it is reasonably possible on a date and time agreed with the Client.
- 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that ScreedPro claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond ScreedPro's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify ScreedPro that the site is ready.
- 6.3 At ScreedPro's sole discretion, the cost of delivery is included in the Price.
- 6.4 ScreedPro may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by ScreedPro for delivery of the Works is an estimate only and ScreedPro will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that ScreedPro is unable to supply the Works as agreed solely due to any action or inaction of the Client, then ScreedPro shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

7. Risk

- 7.1 If ScreedPro retains ownership of the Materials under clause 12 then:
- (a) where ScreedPro is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at ScreedPro's address; or
 - (ii) the Materials are delivered by ScreedPro or ScreedPro's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests ScreedPro to leave Materials outside ScreedPro's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 Where ScreedPro is required to supply the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and ScreedPro shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the supply and work incidental thereto.
- 7.4 The Client acknowledges that:
- (a) where the Client has supplied materials for ScreedPro to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the materials; and
 - (b) Materials supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. ScreedPro will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (c) ScreedPro shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) to (b) applies.

8. Screed Risks

- 8.1 The Client acknowledges that:
- (a) the curing time for screed can be affected by elements such as temperature or the weather as such ScreedPro offers no guarantee as to the length of time the curing process will take; and
 - (b) where ScreedPro is engaged to repair and/or replace a damaged asphalt surface that ScreedPro is only responsible for that portion of the Works. ScreedPro does not at any stage accept any liability in respect of previous Works carried out by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify ScreedPro against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and
 - (c) ScreedPro offers no guarantee against cracking or delamination of (also known as going “drummy”) screed or strength or curing failures resulting from insufficiently compacted or poorly installed screed or screeds that have gone “dusty” due to rapid drying (often resulting from exposure to sun or warm dry winds) and recommends that Clients take sufficient measures to control the drying time of the screed, protect the screed from the weather and other factors (including sun, wind, rain and damage by people or equipment walking or driving on it) to install mesh or take other measures such as the installation of expansion joints recommended under the relevant Australian standards and industry practices to protect against cracking and to ensure the correct application of an appropriate bonding agent such as adhesive or slurry (and the preparation of the substrate such as grinding in accordance with Australian Standards to ensure an appropriate substrate profile and cleaning/vacuuming to ensure the area is clear from dust or contaminants which can negatively affect adhesion).
- 8.2 ScreedPro shall not be held liable for any loss, damages, or costs, howsoever resulting from the installation of the Materials as ScreedPro is a supply only business and is not responsible for the installation of the Materials:

9. Accuracy of Client’s Plans and Measurements

- 9.1 ScreedPro shall be entitled to rely on the accuracy of any plans, specifications (including, but not limited to, CAD drawings) and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, ScreedPro accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client’s responsibility to verify the accuracy of the measurements and quantities, before the Client or ScreedPro places an order based on these measurements and quantities. ScreedPro accepts no responsibility for any loss, damages, or costs however resulting from the Client’s failure to comply with this clause.

10. Access

- 10.1 The Client shall ensure that ScreedPro has clear and free access to the work site at all times to enable them to undertake the Works. ScreedPro shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of ScreedPro.
- 10.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, or other heavy equipment as may be deemed necessary by ScreedPro. The Client agrees to indemnify ScreedPro against all costs incurred by ScreedPro in recovering such vehicles in the event they become bogged or otherwise immovable.

11. Underground Locations

- 11.1 Prior to ScreedPro commencing any work the Client must advise ScreedPro of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst ScreedPro will take all care to avoid damage to any underground services the Client agrees to indemnify ScreedPro in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. Title

- 12.1 ScreedPro and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid ScreedPro all amounts owing to ScreedPro; and
 - (b) the Client has met all of its other obligations to ScreedPro.
- 12.2 Receipt by ScreedPro of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to ScreedPro on request.
 - (b) the Client holds the benefit of the Client’s insurance of the Materials on trust for ScreedPro and must pay to ScreedPro the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by ScreedPro shall be sufficient evidence of ScreedPro’s rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with ScreedPro to make further enquiries.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for ScreedPro and must pay or deliver the proceeds to ScreedPro on demand.
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of ScreedPro and must sell, dispose of or return the resulting product to ScreedPro as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises ScreedPro to enter any premises where ScreedPro believes the Materials are kept and recover possession of the Materials.
 - (g) ScreedPro may recover possession of any Materials in transit whether or not delivery has occurred.

ScreedPro WA Pty Ltd – Terms & Conditions of Trade

- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of ScreedPro.
- (i) ScreedPro may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

13. Personal Property Securities Act 2009 (“PPSA”)

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to ScreedPro for Works – that have previously been supplied and that will be supplied in the future by ScreedPro to the Client.
- 13.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ScreedPro may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, ScreedPro for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of ScreedPro;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of ScreedPro;
 - (e) immediately advise ScreedPro of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 13.4 ScreedPro and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by ScreedPro, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client shall unconditionally ratify any actions taken by ScreedPro under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of ScreedPro agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies ScreedPro from and against all ScreedPro’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ScreedPro’s rights under this clause.
- 14.3 The Client irrevocably appoints ScreedPro and each director of ScreedPro as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client’s behalf.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 15.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within twenty-one (21) days of delivery notify ScreedPro in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow ScreedPro to inspect the Materials or to review the Works provided.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 ScreedPro acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, ScreedPro makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. ScreedPro’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, ScreedPro’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If ScreedPro is required to replace any Materials under this clause or the CCA, but is unable to do so, ScreedPro may refund any money the Client has paid for the Materials.
- 15.7 If ScreedPro is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then ScreedPro may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 15.8 If the Client is not a consumer within the meaning of the CCA, ScreedPro’s liability for any defect or damage in the Materials is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by ScreedPro at ScreedPro’s sole discretion;
 - (b) limited to any warranty to which ScreedPro is entitled, if ScreedPro did not manufacture the Materials;
 - (c) otherwise negated absolutely.

- 15.9 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) ScreedPro has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, ScreedPro shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without ScreedPro's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by ScreedPro;
 - (f) fair wear and tear, any accident, or act of God.
- 15.11 Notwithstanding anything contained in this clause if ScreedPro is required by a law to accept a return then ScreedPro will only accept a return on the conditions imposed by that law.

16. Default and Consequences of Default

- 16.1 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 ScreedPro's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes ScreedPro any money the Client shall indemnify ScreedPro from and against all costs and disbursements incurred by ScreedPro in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ScreedPro's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies ScreedPro may have under this contract, if a Client has made payment to ScreedPro, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by ScreedPro under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 16.4 Without prejudice to ScreedPro's other remedies at law ScreedPro shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ScreedPro shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to ScreedPro becomes overdue, or in ScreedPro's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by ScreedPro;
 - (c) the Client becomes insolvent or bankrupt, 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 16.5 Nothing in this contract shall prevent ScreedPro from taking any legal action whatsoever in respect of unpaid invoices such as filing claim and seeking judgement with the relevant Court or seeking the appointment of an administrator or a winding up order with the relevant Court or the appointment of a debt collector or the submitting or assignment of the unpaid invoice to its insurers or agents for collection or insurance claim and the sharing of information relating to such matter this the Courts, ScreedPro's lawyers, insurers or collection agents.

17. Cancellation

- 17.1 Without prejudice to any other remedies ScreedPro may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions ScreedPro may suspend or terminate the supply of Works to the Client. ScreedPro will not be liable to the Client for any loss or damage the Client suffers because ScreedPro has exercised its rights under this clause.
- 17.2 ScreedPro may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice ScreedPro shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to ScreedPro for Works already performed. ScreedPro shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by ScreedPro as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

18. Privacy Act 1988

- 18.1 The Client agrees for ScreedPro to obtain from a credit reporting body (CRB) and its insurers a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by ScreedPro.
- 18.2 The Client agrees that ScreedPro may exchange information about the Client with those credit providers and insurers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.3 The Client consents to ScreedPro being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Client agrees that personal credit information provided may be used and retained by ScreedPro for the following purposes (and for other agreed purposes or required by):

ScreedPro WA Pty Ltd – Terms & Conditions of Trade

- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 18.5 ScreedPro may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
 - (b) name of the credit provider and that ScreedPro is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and ScreedPro has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of ScreedPro, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Client shall have the right to request (by e-mail) from ScreedPro:
- (a) a copy of the information about the Client retained by ScreedPro and the right to request that ScreedPro correct any incorrect information; and
 - (b) that ScreedPro does not disclose any personal information about the Client for the purpose of direct marketing.
- 18.8 ScreedPro will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Client can make a privacy complaint by contacting ScreedPro via e-mail. ScreedPro will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 19. Not used**
- 20. Compliance with Laws**
- 20.1 The Client and ScreedPro shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 20.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 20.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 21. Construction Contracts Act 2004**
- 21.1 At ScreedPro's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Construction Contracts Act 2004 may apply.
- 21.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.
- 22. Service of Notices**
- 22.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. Trusts**
- 23.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not ScreedPro may have notice of the Trust, the Client covenants with ScreedPro as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of ScreedPro (ScreedPro will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which ScreedPro has its principal place of business, and are subject to the jurisdiction of the Perth Courts in that state.
- 24.3 Subject to clause 15 ScreedPro shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ScreedPro of these terms and conditions (alternatively ScreedPro's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 24.4 ScreedPro may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of ScreedPro.
- 24.6 ScreedPro may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of ScreedPro's sub-contractors without the authority of ScreedPro.
- 24.7 The Client agrees that ScreedPro may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for ScreedPro to provide Works to the Client.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.