



## 1. Definitions

- 1.1 "LGDH" means **Living Green Designer Homes Pty Ltd**, by its successors assigns or any person acting on behalf of Living Green Designer Homes Pty Ltd (ABN: 41002265492).
- 1.2 "Client" means the person/s buying the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Works" means all Goods, Services or Equipment supplied by LGDH to the Client at the Clients request from time to time (where the context so permits the terms 'Works', 'Goods', 'Services, and or 'Equipment' shall be the interchangeable for each other).
- 1.4 "Price" means the Price payable for the Works as agreed between LGDH and the Client in accordance with clause 5.

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions when the Client places an order for or accepts delivery of the Works.
- 2.2 These terms and conditions may only be amended with LGDH consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and LGDH.

## 3. Change in Control

- 3.1 The Client shall give LGDH 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, or business practice). The Client shall be liable for any loss incurred by LGDH as a result of the Client's failure to comply with this clause.

## 4. Electronic Transactions New South Wales (NSW) Act 2000

- 4.1 Electronic signatures shall be deemed to be acceptable by either party providing that the parties have complied of the Electronic Transactions (NSW) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 5. Price and Payment

- 5.1 At LGDH sole discretion the Price shall be either:
  - a) as indicated on any invoice provided by LGDH to the Client; or
  - b) the Price as at the date of delivery of the Works according to LGDH current price list; or
  - c) LGDH quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 LGDH reserves the right to change the Price if a variation to LGDH's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, hard rock barriers or other latent soil conditions, tree roots or as a result of any increase to LGDH in the cost of materials and labour) will be charged for on the basis of LGDH's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

- 5.3 At LGDH's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by LGDH, which may be:
- a) on delivery of the Works;
  - b) before delivery of the Works;
  - c) the date specified on any invoice or other form as being the date for payment; or
  - d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by LGDH.
- 5.5 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 LGDH.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to LGDH an amount equal to any GST LGDH must pay for any supply by LGDH under this or any other agreement for the sale of the Works. 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 Works**

- 6.1 Delivery ("Delivery") of the n Works is taken to occur at the time that:
- a) the Client or the Client's nominated carrier takes possession of the Works or Goods at LGDH's address; or
  - b) LGDH (or LGDH's nominated carrier) delivers the Works or Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At LGDH's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 Delivery of the Works to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.4 The Client must take delivery by receipt or collection of the Works whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Works as arranged then LGDH shall be entitled to charge a reasonable fee for redelivery of the Works and/or the storage of the Works.
- 6.5 The Client shall take delivery of the Works tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- a) such discrepancy in quantity shall not exceed five percent (5%); and
  - b) the Price shall be adjusted pro rata to the discrepancy.
- 6.6 LGDH may deliver the Works in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.7 Any time or date given by LGDH to the Client is an estimate only. The Client must still accept delivery of the Works even if late and LGDH will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## **7. Risk**

- 7.1 Risk of damage to or loss of the Works passes to the Client on Delivery and the Client must insure the Works on or before Delivery.
- 7.2 If any of the Works are damaged or destroyed following delivery but prior to ownership passing to the Client, LGDH is entitled to receive all insurance proceeds payable for the Works. The production of these terms and conditions by LGDH is sufficient evidence of LGDH's rights to receive

the insurance proceeds without the need for any person dealing with LGDH to make further enquiries.

## **8. Access**

8.1 The Client shall ensure that LGDH has clear and free access to the work site at all times to enable them to undertake the works. LGDH 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.

## **9. Underground Locations**

9.1 Prior to LGDH commencing any work the Client must advise LGDH 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.

9.2 Whilst LGDH will take all care to avoid damage to any underground services the Client agrees to indemnify LGDH 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 9.1.

## **10. Client's Disclaimer**

10.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by LGDH and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

10.2 Where LGDH provides advice to the Client, such advice is given in good faith only. The Client acknowledges that LGDH shall not be liable for any claims howsoever arising out of any advice given.

## **11. Insurance**

11.1 LGDH shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure they are similarly insured.

## **12. Retention of Title to Works**

12.1 LGDH and the Client agree that ownership of the Works shall not pass until:

- (a) the Client has paid LGDH all amounts owing to LGDH; and
- (b) the Client has met all of its other obligations to LGDH.

12.2 Receipt by LGDH 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:

- (a) until ownership of the Works passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Works and must return the Works to LGDH on request.
- (b) the Client holds the benefit of the Client's insurance of the Works on trust for LGDH and must pay to LGDH the proceeds of any insurance in the event of the Works being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Works other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Works then the Client must hold the proceeds of any such act on trust for LGDH and must pay or deliver the proceeds to LGDH on demand.

- (d) the Client should not convert or process the Works or intermix them with other works but if the Client does so then the Client holds the resulting product on trust for the benefit of LGDH and must sell, dispose of or return the resulting product to LGDH as it so directs.
- (e) the Client irrevocably authorises LGDH to enter any premises where LGDH believes the Works are kept and recover possession of the works.
- (f) LGDH may recover possession of any Works in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Works nor grant nor otherwise give away any interest in the Works while they remain the property of LGDH.
- (h) LGDH may commence proceedings to recover the Price of the Works sold notwithstanding that ownership of the Works 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 Works/Equipment that has previously been supplied and that will be supplied in the future by LGDH 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 LGDH 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, LGDH 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 Works charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of LGDH;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Works in favour of a third party without the prior written consent of LGDH;
- (e) immediately advise LGDH of any material change in its business practices of selling Works which would result in a change in the nature of proceeds derived from such sales.

13.4 LGDH 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 waives their 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 their 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 LGDH, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

13.8 The Client must unconditionally ratify any actions taken by the LGDH under clauses 13.3 to 13.5.

13.9 Subject to any express provisions to the contrary 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 LGDH agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, reality 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 LGDH from and against all LGDH's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising LGDH rights under this clause.
- 14.3 The Client irrevocably appoints LGDH and each director of LGDH 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 the Works on delivery and must within sixty (60) days of delivery notify LGDH 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 Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow LGDH to inspect the Works.
- 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 LGDH 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 in respect of the Non-Excluded Guarantees, LGDH makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Works. LGDH'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, LGDH liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If LGDH is required to replace the Works under this clause or the CCA, but is unable to do so, LGDH may refund any money the Client has paid for the Works.
- 15.7 If the Client is not a consumer within the meaning of the CCA, LGDH's liability for any defect or damage in the Works is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by LGDH at the LGDH's sole discretion;
  - (b) limited to any warranty to which LGDH is entitled, if LGDH did not manufacture the Works;
  - (c) otherwise negated absolutely.
- 15.8 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) the LGDH has agreed that the Works are defective; and
  - (c) the Works are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Works are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, LGDH 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 Works;

- (b) the Client using the Works for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the Works after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by the LGDH;
  - (e) fair wear and tear, any accident, or act of God.
- 15.10 LGDH may in its absolute discretion accept non-defective Works for return in which case LGDH may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Works plus any freight costs.

## **16. Intellectual Property**

- 16.1 Where LGDH has designed, drawn or developed Works for the Client, then the copyright in any designs and drawings and documents shall remain the property of LGDH.
- 16.2 The Client warrants that all designs, specifications or instructions given to LGDH will not cause LGDH to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify LGDH against any action taken by a third party against LGDH in respect of any such infringement.

## **17. Consequences of Default**

- 17.1 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 LGDH's sole discretion such interest shall compound monthly at such a rate)(30% per annum) after as well as before any judgment.
- 17.2 If the Client owes LGDH any money the Client shall indemnify LGDH from and against all costs and disbursements incurred by LGDH in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, LGDH's contract default fee, and bank dishonour fees).
- 17.3 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 17.4 Without prejudice to any other remedies LGDH may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the LGDH may suspend or terminate the supply of Works to the Client. LGDH will not be liable to the Client for any loss or damage the Client suffers because the LGDH has exercised its rights under this clause.
- 17.5 Without prejudice to LGDH other remedies at law LGDH shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to LGDH shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to LGDH becomes overdue, or in the LGDH's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client become 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**18. Cancellation**

- 18.1 LGDH may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are due to be delivered by giving written notice to the Client. On giving such notice LGDH shall repay to the Client any money paid by the Client for the Works. LGDH shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of the Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by LGDH as a direct result of the cancellation (including, but not limited to, any loss of profits).

**19. Privacy Act 1988**

- 19.1 The Client agrees for LGDH to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by LGDH.
- 19.3 The Client agrees that LGDH 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 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. The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 19.4 The Client consents to LGDH being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 19.5 The Client agrees that personal credit information provided may be used and retained by LGDH for the following purposes (and for other purposes as shall be agreed between the Client and LGDH or required by law from time to time):
- (a) the provision of Works; and/or
  - (b) the marketing of Works by LGDH, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
- 19.6 LGDH may give information about the Client to a credit reporting agency for the following purposes;
- (a) to obtain a consumer credit report about the client;
  - (b) allow the credit reporting agency to create or maintain credit or maintain credit information file containing information about the Client.
- 19.7 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that LGDH is a current credit provider to the Client;

- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any default that has been listed;
- (f) information that in the opinion of LGDH, the Client has committed a serious credit infringement (that is, fraudulently shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by LGDH has been paid or otherwise discharged.

## **20. Dispute Resolution**

If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## **21. Compliance with Laws**

- 21.1 The Client and LGDH 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.
- 21.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 21.3 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.

## **22. Building / Construction Industry Security of Payment Act 2002**

- 22.1 At LGDH sole discretion, if there are any disputes or claims for unpaid, Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of New South Wales, except to the extent permitted by the Act where applicable.

## **23. General**

- 23.1 The failure by LGDH to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect LGDH'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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which LGDH has its principal place of business, and are subject to the jurisdiction of the courts in New South Wales.



- 23.3 Subject to clause 15, LGDH 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 LGDH of these terms and conditions (alternatively LGDH's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 23.4 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 LGDH nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 LGDH may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.6 The Client agrees that LGDH may amend these terms and conditions at any time. If LGDH makes a change to these terms and conditions, then that change will take effect from the date on which LGDH notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for LGDH to provide Works to the Client.
- 23.7 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.
- 23.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

