

**SIGNATURE CUSTOM HOMES
PURCHASE ORDER TERMS AND CONDITIONS**

1. DEFINITIONS

1.1 In this agreement, unless the context otherwise requires:

agreement means the agreement between Signature and the Supplier set out in these terms and conditions, the purchase order, any special terms and conditions contained in or attached to the purchase order and the principal contract including the drawings, plans and specifications under the principal contract.

Business Day means a day other than a Saturday, Sunday or State public holiday in Western Australia.

defective goods means goods which are defective in design, performance, workmanship or makeup or are not in conformity with this agreement.

defective services means services which are of inferior quality or workmanship or are otherwise unsatisfactory, or which are not in conformity with this agreement.

GST law has the same meaning as GST law in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and **GST** means the same as in the GST law.

goods means the goods specified in the purchase order.

party means Signature or the Supplier and **parties** means both Signature and the Supplier.

site means the site where the goods are supplied and/or the services are performed.

price means the price specified in the purchase order, or as otherwise agreed with us.

principal contract means the contract pursuant to which Signature has agreed to conduct building works on the site in respect of which the supply of the goods and/or services forms part.

purchase order means the purchase order for goods and/or services issued by Signature to the Supplier containing, amongst other things, a description of the goods and/or services.

services means the services specified in the purchase order.

tax invoice is an invoice which complies with the *New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Signature means Flecker Court Pty Ltd ABN 39 097 790 906 trading as "Signature Custom Homes".

Supplier means the person named in the purchase order in this agreement as the supplier of the goods or services.

warranty period means the period of 12 months from the date of delivery or 12 months from the date of installation or initial use of the goods, whichever is the sooner and/or 12 months from the date on which the services are performed.

1.2 In this agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa.
- (b) words of one gender include every other gender.
- (c) words denoting individuals include a firm, body corporate, unincorporated association, government and governmental, municipal or statutory agency, authority, body or department of any kind and vice versa.
- (d) references to any statute, ordinance, code or other law includes regulations and other instruments under any of them and amendments, re-enactments, replacements or consolidations of any of them occurring at any time.
- (e) headings shall not affect the construction or interpretation of this agreement.
- (f) references to a clause, paragraph, annexure or schedule is a reference to the same in this agreement.
- (g) a reference to a party in this agreement includes a party's personal representatives, successors in title and permitted assigns.
- (h) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally.
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.

- (j) a reference to a document includes that document as amended or replaced.
- (k) a reference to a whole thing includes a reference to part of that thing.
- (l) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.
- (m) where a word or phrase is defined in this agreement, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.
- (n) "include", "including" and other similar expressions are not words of limitation.
- (o) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (p) if an act prescribed under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.
- (q) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
- (r) a reference to time is a reference to Perth time.

2. SUPPLY OF GOODS AND/OR SERVICES

- 2.1 The Supplier must supply the goods and/or services to Signature in accordance with this agreement.
- 2.2 By accepting a written order form Signature and or supplying the goods and/or services referred to in the purchase order, the Supplier agrees to be bound by the terms in this agreement and that the terms and conditions in any of the Supplier's documents, in respect of the goods and/or services are excluded.
- 2.3 The goods and/or services must match the description, nature and quality in the purchase order and be supplied at the time (if any) specified in the purchase order.
- 2.4 The goods and/or services must comply with any applicable legislation and relevant standard of the Standards Australia.
- 2.5 The goods and/or services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose which Signature makes known to the Supplier.
- 2.6 The goods must be new and of merchantable quality (unless otherwise specified in the purchase order).
- 2.7 Unless otherwise specified, the Supplier is responsible for ensuring that the goods are properly packed and delivered to the place and within the time period specified in the purchase order, and the Supplier must include a packing list in each package of goods delivered.
- 2.8 Signature must have a reasonable time to inspect the goods after delivery. Payment for the goods or the signing of delivery receipts before inspection does not constitute acceptance of the goods.
- 2.9 Title to and risk in the goods does not pass to Signature until Signature takes delivery of the goods and inspects and accepts the goods.
- 2.10 The services must be performed with due care and skill by appropriately qualified, competent, skilled and experienced personnel in a tradesman like manner.
- 2.11 The Supplier must provide to Signature, at its request, progress reports on the performance of the services. A progress report must be detailed enough to allow Signature to ascertain whether the services are in conformity with this agreement.
- 2.12 At any time during the supply of the goods and/or services Signature may inspect or test the goods and/or the services. If upon inspection Signature finds any goods and/or any services to be defective, Signature may:
 - (a) repair the defective goods or reject them by returning them to the Supplier;

- (b) make good the defective services or reject them by notifying the Supplier that it is rejecting them.

The Supplier must reimburse Signature for any expenses it incurs in returning or repairing defective goods and/or in making good defective services and refund to Signature upon request any payments made by Signature in respect of goods and/or services which it rejects.

2.13 The Supplier must, in performing the services:

- (a) use best endeavours not to interfere with any activities of Signature or any other person on the site;
- (b) comply with, and ensure that its employees, agents, contractors and subcontractors comply with:
 - (1) all applicable laws, regulations, industrial awards and agreements including any applicable award or order of any relevant authority body, court or commission which relates to persons employed by the Supplier;
 - (2) all safety, health and environment guidelines, codes of practice, inductions, rules and procedures including site safety rules and Signature's safety management plan and safety policies; and
 - (3) all orders and directions given by Signature;
- (c) ensure the site are left secure, clean and tidy;
- (d) provide all equipment, tools, labour, products and materials necessary to complete the services;
- (e) take all reasonable measures necessary to prevent injury and damage to people and property and to avoid causing nuisance or unreasonable noise and disturbance to any person;
- (f) promptly rectify at its own cost any damage to property it causes in the performance of the services;
- (g) promptly inform Signature of any matter or thing which comes to its notice that will impede the performance of the services; and
- (h) upon demand by Signature correct any defects that may appear in the services prior to the expiration of the defects liability period specified in the principal contract.

2.14 The Supplier acknowledges and agrees that:

- (a) it has examined the drawings, plans and specifications under the principal contract relating to the services;
- (b) in supplying the goods and/or performing the services it must comply with all applicable provisions of the principal contract, including the drawings, plans and specifications under the principal contract;
- (c) the order of precedence between the documents that comprise this agreement is as follows:
 - (1) drawings, plans and specifications under the principal contract;
 - (2) the principal contract;
 - (3) the purchase order and any special terms and conditions contained in or attached to the purchase order;
 - (4) these purchase order terms and conditions.

Any ambiguity, discrepancy or inconsistency between the documents that comprise this agreement shall be determined by Signature whose decision shall be final and binding on the Supplier.

2.15 If Signature desires to reduce, expand or otherwise vary the services, Signature will provide the Supplier with a written notice of such reduction, expansion or variation (**variation**). The Supplier will notify Signature in writing as soon as practicable:

- (a) if it is able to carry out the variation and the effect of the variation on the timetable for completing the purchase order and the overall cost of fulfilling the purchase order;
- (b) if it is unable to carry out the variation, in which case Signature will be entitled to arrange a third party to carry out the work the subject of the variation.

If Signature wishes the Supplier to perform the work the subject of the variation, Signature will provide the Supplier with a separate purchase order for that work.

2.16 Signature:

- (a) will arrange for the Supplier to have sufficient access to the site to enable it to undertake the services; and
- (b) may require the removal from the site of any employee, agent, contractor or subcontractor of the Supplier who in the reasonable opinion of Signature is incompetent or misconducts himself.

3. PRICE AND PAYMENT

- 3.1 Signature agrees to pay the Supplier the price in accordance with this agreement for the goods and/or services.
- 3.2 The price may not be increased without Signature's prior consent.
- 3.3 The price is inclusive of all costs incurred by the Supplier in supplying the goods and/or performing the services including all packaging, transport, delivery and insurance.
- 3.4 The Supplier will submit invoices to Signature upon delivery of the goods; and/or at the completion of the services, unless the purchase order states that progress payments are to be made in which event progress payments will be made at the end of each month for goods supplied and/or services performed by the Supplier in that month.
- 3.5 With each invoice the Supplier must provide Signature with all relevant records to enable Signature to calculate and/or verify the amount of the invoice.
- 3.6 Signature will pay all invoices rendered by the Supplier under this clause within 30 days of the end of the month in which the invoice is received by Signature, except where Signature disputes the invoice. Where Signature disputes the invoice, it will pay the undisputed part of the invoice and if the resolution of the dispute determines that Signature is to pay an amount to the Supplier, Signature will pay that amount upon resolution of the dispute.
- 3.7 Signature may reduce any payment due to the Supplier under this agreement by any amount for which the Supplier is liable to Signature.
- 3.8 If Signature is subject to any retention of moneys payable to Signature under the principal contract then, notwithstanding any other provision of this agreement, the Supplier agrees that any payments to it under this agreement will be subject to the same retention arrangements (*eg, if Signature is subject to a 5% retention for 6 months after completion of the principal contract, the Supplier shall be subject to a 5% retention on any moneys payable to it under this agreement*).
- 3.9 Unless otherwise stated, all amounts payable under this agreement are exclusive of GST. A recipient of a taxable supply made under this agreement must pay to the supplier an amount equivalent to any GST paid or payable by the supplier in respect of the taxable supply subject to the supplier issuing a valid tax invoice in accordance with the GST law to the recipient. The GST amount must be paid at the same time as the other consideration for the supply is to be paid or provided.

4. WARRANTIES

4.1 The Supplier warrants that:

- (a) it is the owner of the goods free of any liens, charges and encumbrances and that Signature will be entitled to clear, complete and quiet possession of the goods.
- (b) the goods and/or services will be free from any defect in design, performance, workmanship and makeup;
- (c) the goods and/or services will conform with these terms and conditions;
- (d) the goods and/or services will not infringe any patents, registered designs, trade marks, copyright, confidential information or other intellectual property rights of any third party.

4.2 If during the defects liability period under the principal contract Signature finds that any of the goods and/or services are defective, Signature may:

- (a) repair the defective goods at the Supplier's cost or reject them by returning them to the Supplier;
- (b) re-perform or make good the defective services at the Supplier's cost or reject them by notifying the Supplier that it is rejecting them;

- (c) require the Supplier to repair or replace (as Signature may request) free of charge any defective goods that Signature returns to the Supplier; and/or
- (d) require the Supplier to re-perform or make good (as Signature may request) free of charge any defective services that Signature rejects.
- 4.3 The Supplier is not liable for any defect or fault in the goods and/or services that is caused by the negligence of Signature or any of its employees, agents, contractors or subcontractors.
- 5. INSURANCE AND INDEMNITIES**
- 5.1 During the supply of the goods and performance of the services the Supplier must take out and maintain:
- (a) worker's compensation insurance that complies with the law in Western Australia and includes a common law cover for any employer's liability of not less than \$10,000,000;
- (b) if required by Signature, disability and personal accident and illness insurance cover in amounts reasonably satisfactory to Signature;
- (c) insurance for the goods up to the time they are delivered and installed (if required) and accepted by Signature for an amount not less than their replacement value;
- (d) insurance for public and products liability with a limit of not less than \$10,000,000 for any one occurrence to cover all sums which the Supplier may be liable to pay for death or bodily injury, disease or illness to any person, and loss of or damage to any property arising out of or in connection with this agreement;
- (e) any other insurance required by law or reasonably required by Signature.
- 5.2 The insurances in this clause must be on terms and with insurers reasonably acceptable to Signature and, if required by Signature, include Signature as a named co-insured.
- 5.3 The Supplier must produce to Signature documentary evidence of the insurances required by this clause upon demand by Signature. Signature has the right to take out and maintain at the Supplier's cost any policy of insurance required by this clause if the Supplier fails to do so.
- 5.4 The Supplier must promptly notify Signature:
- (a) of any cancellation of or change to any of the insurances in this clause which may adversely affect Signature;
- (b) if any event occurs which may give rise to a claim under any of the insurances in this clause and must thereafter keep Signature fully informed of any subsequent actions and developments concerning the claim.
- 5.5 The Supplier shall indemnify Signature and keep Signature indemnified against all actions, claims, demands, losses, liabilities, penalties, damages, costs and expenses which Signature may sustain or incur arising directly or indirectly:
- (a) out of the supply of the goods and/or the performance of the services by the Supplier, except to the extent that such liability, loss and/or damage is caused by a deliberate, negligent or reckless act on the part of Signature; and
- (b) from any breach of this agreement, or any negligent act or omission, by the Supplier or any of its employees, agents or subcontractors.
- 5.6 Each indemnity in this agreement is a continuing obligation separate and independent from any other obligations and survives termination of this agreement.
- 5.7 Neither the Supplier nor Signature is liable to the other in any circumstances for any indirect, economic, special or consequential loss or damage, including loss of revenue or loss of profit.
- 6. CONFIDENTIALITY**
- 6.1 Each party shall not, either during the term of this agreement or at any time thereafter (except in the proper course of its duties under this agreement or as required by law or by the other of them) disclose to any person any confidential information of or relating to the other party of which it has become possessed as a result of this agreement or the negotiations preceding this agreement.
- 6.2 Nothing in this agreement prohibits disclosure of information which
- (a) is in the public domain;
- (b) is lawfully received from a third party; or
- (c) is required to be disclosed by law or court order.
- 6.3 The obligations in this clause survive the termination of this agreement.
- 7. TERMINATION**
- 7.1 Either party may terminate this agreement with immediate effect by giving written notice to the other party if the other party:
- (a) materially breaches this agreement and does not remedy the breach within 2 Business Days of receipt of written notice from the party not in breach requiring the breach to be remedied;
- (b) being a body corporate:
- (1) has a liquidator or provisional liquidator appointed;
- (2) becomes an insolvent under administration (as defined in section 9 of the *Corporations Act 2001*);
- (3) has a controller (as defined in section 9 of the *Corporations Act 2001*) appointed to it or any of its property;
- (4) as a result of the operation of section 459F(1) of the *Corporations Act 2001* is taken to have failed to comply with a statutory demand or is unable to pay its debts as and when they fall due and payable due; or
- (5) enters into any compromise, arrangement or assignment, whether formal or informal, with any of its members or creditors or any analogous event occurs; or
- (c) being a natural person:
- (1) dies or ceases to be of full legal capacity or otherwise becomes incapable of managing his or her own affairs for any reason;
- (2) is unable to pay his or her debts as and when they fall due and payable;
- (3) has a trustee in bankruptcy appointed; or
- (4) enters into any compromise, arrangement or assignment, whether formal or informal, with any of its creditors or any analogous event occurs.
- 7.2 If this agreement is terminated, the Supplier must immediately cease the supply of the goods and/or services and immediately return to Signature all originals and copies of Signature's confidential information.
- 7.3 If this agreement is terminated, Signature may:
- (a) complete the whole or any part of the services remaining to be completed and for that purpose may employ and pay other persons to carry out and complete same;
- (b) take possession of and use and permit other persons to use any materials, plant and equipment which are owned by the Supplier and located on the site and as may be necessary for the purpose of completing the performance of the services;
- (c) require the Supplier to promptly assign to Signature or its nominee with or without payment, the benefit of any agreement to supply goods for or to perform any services under this agreement; and
- (d) deduct, charge or retain all moneys it shall pay or incur in the completion of the services from moneys due to the Supplier.
- 7.4 Termination for any reason does not affect the rights of a party that arise before the termination, or as a consequence of the event or occurrence giving rise to the termination, or as a consequence of the breach of any obligation under this agreement which continues to take effect after termination.
- 8. RESTRICTION ON ASSIGNMENT / SUBCONTRACTING**
- 8.1 The Supplier must not assign its rights and/or obligations under this agreement without Signature's prior written consent.
- 8.2 The Supplier must not subcontract any of its obligations under this agreement without Signature's prior written approval. Any subcontractor approved by Signature must comply fully with all relevant terms of this agreement including the provisions on insurance, indemnities and confidentiality.

9. NOTICES

- 9.1 Any notice or other communication in connection with this agreement:
- (a) must be in writing and signed by the party giving it or its solicitor or agent, but an email does not have to be signed;
 - (b) must be given or served in any of the following ways, namely:
 - (1) in a manner authorised by law or by personal delivery;
 - (2) sent by prepaid post to the address of the addressee specified on the front page of this agreement;
 - (3) sent by fax to the fax number of the addressee specified on the front page of this agreement; or
 - (4) sent by email to the email address of the addressee specified on the front page of this agreement,or if the addressee notifies another address, fax number or email address in accordance with this clause then to that address, fax number or email address.
 - (c) takes effect from the time it is received and, unless a later time is specified, is taken to be received:
 - (1) if served or given by personal delivery, at the time it is delivered;
 - (2) if left at the address of the addressee, at the time it is left;
 - (3) if sent by prepaid ordinary post to the address of the addressee, at the expiration of 2 Business Days after posting;
 - (4) if sent by fax to the fax number of the addressee, at the time shown in the transmission report as the time that the whole fax was sent; or
 - (5) if sent by email to the email address of the addressee, at the time the email was sent unless the sender is aware, or the sender's internet service provider notifies the sender, that the email was not sent successfully,provided that if notices are received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day.

10. GENERAL

- 10.1 If a party's performance of this agreement, or of any obligation hereunder is prevented, restricted or interfered with by reason of fire, storm, flood, earthquake, explosion, breakdown, strike, labour dispute, accident, lack of transportation, epidemic, lack of raw materials, power or supplies, war, revolution, civil commotion, acts of God, blockade or embargo or any law, order, proclamation, decree or requirement of any government or any government, municipal or statutory agency, authority, body or department, or any other act whatsoever beyond the reasonable control of a party, then:
- (a) the party so affected, upon giving prompt notice to the other party, shall be excused from such performance (other than an obligation to pay any money) to the extent of such prevention, restriction or interference; and
 - (b) the other party shall likewise be excused from performance of its obligations to the extent such obligations relate to the performance so prevented, restricted or interfered with,
- provided that the party so affected must use its best efforts to avoid and remove such causes of non-performance. Both parties will resume performance of their respective obligations as soon as is practicably possible when such cases are removed.
- 10.2 The Supplier is an independent contractor and not Signature's agent or employee.
- 10.3 The provisions of this agreement comprise the entire agreement between the parties and supersede all prior agreements and understanding between the parties in relation to the subject matter of this agreement.
- 10.4 If any provision of this agreement or its application to any person or circumstance is or becomes invalid or unenforceable the remaining provisions of this agreement shall continue in full force and effect to the fullest extent permitted by law.
- 10.5 No party may waive or vary any provision of or right created by this agreement except in writing signed by the party or parties to be bound.

- 10.6 Signature may exercise a right, power or remedy at its discretion separately or concurrently with any other right, power or remedy. An exercise of any right, power or remedy does not prevent a further exercise of a power right or remedy and a failure to exercise or a delay in exercising any power right or remedy does not prevent its exercise.
- 10.7 The special terms and conditions (if any) contained in or attached to a purchase order shall be and be deemed to be incorporated in this agreement as if fully set out herein and in the event that any inconsistency arises between such special terms and conditions and any other provisions of this agreement the special terms and conditions shall prevail.
- 10.8 This agreement shall be governed by the law of Western Australia and the parties agree to submit to the jurisdiction of the courts of Western Australia.