

GRANGE BANKS COMMERCIAL COATINGS

Terms and conditions

1. Definitions

In these Terms unless the context requires otherwise:

Additional Charges means charges that are separate from the Price, and may include but are not limited to, transport, access and equipment hire costs.

Contract means the contract formed as a result of the acceptance of an Order by GBCC. It includes these Terms and the Quote.

Confidential Information is information that:

- (a) by its nature is confidential;
- (b) is designated by the parties as confidential; or
- (c) the parties know or ought to know is confidential;

and includes all information about the GBCC and its related bodies corporate, including but not limited to, all technical, financial, commercial and other information in any form (for example: as a document or in electronic form) of or relating to them or their business affairs, which is made available or which becomes known during the terms of this Contract but does not include information that was in the public domain at the time of its disclosure.

Claim means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence or otherwise).

Consumer Guarantees means the consumer guarantees contained in the Australian Consumer Law, which is contained in Schedule 2 of the Competition and Consumer Act 2010.

Customer means the customer set out in the Quote, offer or other document provided by GBCC (in the absence of such information, the customer who placed the Order).

Delivery Dates means the dates set out in the Quote or such date as the parties otherwise agree in writing.

GBCC means GBCC Pty Limited T/A Grange Banks Commercial Coatings.

Invoice means a tax invoice issued by GBCC to the Customer specifying the Price and any ancillary costs payable by the Customer to GBCC for the Services.

Insolvency Event means any of the following analogous events:

- (a) the Customer, being an individual, commits and act of bankruptcy;
- (b) a party becomes insolvent;
- (c) a party disposes of whole or any part of its assets, operations or business other than in the ordinary course of business;
- (d) the Customer is unable to pay GBCC's debts as the debts fall due;
- (e) any step is taken by a mortgagee to take possession of or dispose of the whole or any part of a party's assets, operations or business; or
- (f) any steps is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or party of any party's assets, operations or business.

Intellectual Property is all of GBCC's and its Related Bodies Corporate's present and future patent and patent applications; rights to inventions; copyright and related rights; trademarks; service marks; trade names; domain names and URLs; rights in good will or to sue for passing off; rights in designs; registered designs; rights in computer software; database rights; rights in Confidential Information (including know-how and trade secrets); and any other intellectual property rights. These rights may be registered or unregistered.

Liability means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees).

Order means any written or verbal order by the Customer to GBCC for the Goods and/or Services.

Price means the price payable in respect of the Services, as specified in any Quote, or Invoice issued by GBCC.

Related Bodies Corporate means related bodies corporate as defined by the *Corporations Act 2001* (Cth).

Scope of Works means the means the project for which the Client has engaged GBCC to perform the Services as set out in the Quote.

Quote means the Quote from GBCC to the Customer for the provision of the Services.

Services means the services to be provided by GBCC to the Customer as described in the Quote.

Terms means these Terms and Conditions of sale.

Work Site means the Customer's site where the Scope of Works will be performed and the Services provided as set out in the Quote.

2. **General**

2.1. These Terms apply to the sale of Goods and Services from GBCC to the Customer to the exclusion of all other terms and conditions of GBCC.

2.2. GBCC will not supply Goods and Services on any other terms or conditions than those set out herein.

3. **Acceptance of Terms and placement of orders**

3.1. The Customer is deemed to have agreed to these Terms by:

- (a) signing and returning a copy of these Terms;
- (b) accepting the Quote verbally or in writing; or
- (c) providing instructions to GBCC in relation to the provision of the Goods and Services.

3.2. If the Customer accepts an Order as specified in clause 3.1, the parties will have created a binding Contract and GBCC will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to GBCC as specified on the Invoice in accordance with the terms of the Contract.

3.3. The Customer must pay to GBCC any costs associated with the Customer purporting to cancel the Contract, including any costs for the Services not yet delivered, to be calculated on a pro-rata basis, and costs for paint ordered and associated administration and management costs.

3.4. GBCC may cancel any Contract at any time prior to the provision of the Services with no liability other than to repay any amount of the Price paid by the Customer in advance of the cancellation.

4. **Services**

4.1. GBCC will provide to the Customer the Services.

4.2. GBCC will exercise reasonable care, skill and ability when performing the Services.

4.3. In providing the Services, GBCC will:

- (a) not be responsible for any design documentation prepared by a third party; and
- (b) carry out Services by the Delivery Dates.

4.4. The Delivery Dates are subject to the Customer providing GBCC with all relevant information, documentation, approvals, licences, material and access to the Work Site to enable GBCC to perform the Services.

4.5. If the Work Scope requires the Services to be provided outside, the Delivery Dates will be subject to the weather. GBCC will not be liable for any delays to the Delivery Dates caused by the weather.

5. **Client's responsibilities and warranties**

5.1. The Customer must:

- (a) provide GBCC with all resources, including but not limited to information, documentation, approvals and licences, to the premises to enable GBCC to perform the Services [unless otherwise provided for in the quote];
- (b) ensure that GBCC has clear and free access to the Work Site at all times to enable them to undertake the Services;
- (c) the Customer must ensure that it has obtained the appropriate authority for GBCC to perform the Services at the Work Site, including but not limited to, the Customer ensuring that authorities have been obtained from the nearby workers/tenants/public in relation to fire services, the paint fumes, and that the smoke detectors, alarms and air conditioners are in good working order.
- (d) use all reasonable endeavours to ensure that there are no circumstances which may affect Grange Bank's ability to provide the Services;
- (e) provide GBCC with any details of any required specifications or properties of the Services at the time the Customer provides an Order to GBCC;
- (f) must ensure that the specifications or properties of the Services stated in any Order by the Customer will be fit for the intended purpose of the Services.

5.2. The Customer warrants that the resources and information provided to GBCC will be accurate and current, to the best of its knowledge.

5.3. GBCC will be entitled to rely on the Customers warranties set out in this clause 4.

5.4. If there are any errors in any plans, specifications or other information provided by the Customer to GBCC as set out in this clause 4, GBCC will be entitled to vary the Price.

5.5. The Customer must take out and maintain all necessary insurance for the duration of the Contract.

6. **Price and Payment Terms**

6.1. The Customer must pay the Fees and the Reimbursable Expenses in the manner set out in the Invoice and within 7 days of the date of the invoice [or as otherwise agreed between the parties].

6.2. If GBCC requires a [20%] deposit [or as otherwise agreed] of the Price to be paid prior to commencing the Services (**Deposit**). Services will not be provided until GBCC receives the Deposit.

6.3. Reference to progress claim and reserve right to invoice monthly regardless of quote/terms

- 6.4. If the Customer fails to make payment of any amount of the Price on the due date, GBCC may suspend its Services and the Customer must pay to GBCC interest on the full amount outstanding at the rate equal to 4% higher than the penalty interest rate fixed by the Attorney-General of Victoria pursuant to s2(1) of the *Penalty Interest Rate Act 1983* (Vic), calculated monthly for the period from the due date until payment is received.
- 6.5. The Customer must reimburse GBCC for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expense associated with any action by GBCC to recover money from the Customer.
- 6.6. The Customer agrees that it must pay to GBCC on demand any expenses, fees and disbursements incurred by GBCC in recovering any amount owing to it by the Customer, including any reasonable debt collection agency fees and legal expenses and any costs incurred by GBCC in respect of any Order cancelled by the Customer.
- 6.7. The Customer may not withhold, make deductions from, or set-off payment of any of the Price due to GBCC for any reason.
- 6.8. GBCC may charge, in addition to the Price, any Additional Charges that GBCC notifies to the Customer from time to time.
7. **Variations to the Services**
- 7.1. If the Customer causes a delay in the performance of the Services without providing GBCC with reasonable written notice in advance, GBCC may add to the Price any additional costs incurred by GBCC for the provision of the Services.
- 7.2. If the Customer wishes to make changes to the Order for the Services or the Scope of Works, it must notify GBCC in writing of those changes, and if those changes result in additional work or time required by GBCC, GBCC may vary the Price to include any additional costs incurred by GBCC as a result of those changes.
8. **Force Majeure**
- 8.1. GBCC will not be liable to the Customer for any failure to perform, or delay in performing Grange Bank's obligations under this Contract if the failure or delay is due to an act of war, revolution or terrorism, an act of God, or any other event beyond the control of GBCC. If such a failure or delay continues for a period of 30 days GBCC may terminate this Contract by giving written notice.
- 8.2. This clause 8 does not apply to any obligation to make payments under the Contract.
9. **Liability**
- 9.1. GBCC will not be liable to the Customer or any other person for any Liability or Claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any other remote abnormal or unforeseeable loss whether or not in the reasonable contemplation of the parties.
- 9.2. GBCC will not be liable for:
- (a) any existing paint work on the Work Site where the existing paint work has bonded to the paintwork provided by GBCC and has weakened GBCC's paint;
 - (b) any loss or damage to the Work Site, including, damage to pathways, buildings, driveways or grass areas.
10. **Defects**
- 10.1. The Customer must promptly notify GBCC in writing of any defects or faults in the Services or defective workmanship in carrying out the Services within seven (7) days of the Completion of the Services.
- 10.2. Following the written notification by the Customer, the Customer must allow GBCC access to inspect the Work Site and to review the Services.
- 10.3. Subject to the Consumer Guarantees, GBCC will not be liable for any defect or damage which may be caused or partly caused by, or arises as a result of:
- (a) the Customer failing to properly maintain the Work Site;
 - (b) the Customer using the Work Site for any purpose other than for which it was designed;
 - (c) the Customer continuing to use the Work Site after any defects become apparent or should have become apparent;
 - (d) interference with the Services by the Customer or any third party without Grange Bank's written prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by GBCC;
 - (f) fair wear and tear, any accident, or force majeure event as set out in clause 8 of this Contract.
- 10.4. Variations to the colour, texture, surface and finish of the paint may occur due to surface texture of the material, gloss levels and lighting. GBCC does not guarantee that the paint ordered will be identical to the samples. GBCC takes no responsibility for any variations in the paint provided, and will not accept any defects or faults on account of the natural variations in the paint.
- 10.5. Nothing in this clause 10 shall absolve the Customer's payment obligations under clause 6.

11. **Indemnity**

The Customer agrees to indemnify GBCC against any Liability arising from the Customer's breach of the Contract or from its use of the Work Site including, without limitation, any damages resulting from negligence, mistake, omission or failure of performance, whether or not resulting from any act of GBCC or its agents.

12. **Confidential Information and Intellectual Property**

12.1. The Customer must not at any time, or for any reason, whether during the term of this Contract or after its termination disclose to any person, or use for their own or another person's benefit any Confidential Information.

12.2. The Customer acknowledges and agrees that:

- (a) the Intellectual Property remains the property of GBCC; and
- (b) this Contract does not confer on the Customer any proprietary right or title to any of the Intellectual Property.

13. **Termination**

13.1. GBCC and the Customer may immediately terminate, or suspend the performance of, any Contract if:

- (a) the other party breaches a term of the Contract (including these Terms) and does not remedy the breach within 7 days of notification;
- (b) the other party breaches a term of the Contract (including these Terms) which is not capable of remedy;
- (c) there is any direct or indirect change in the Control of either party; and
- (d) if an Insolvency Event occurs.

13.2. If the Contract is terminated for any reason:

- (a) the Customer must immediately pay to GBCC a pro-rata payment for the Goods provided and Services performed by GBCC up to the date of termination [AND OTHER COSTS AS ABOVE], and any other money owed by the Customer to GBCC under this Contract as at the date of termination; and
- (b) termination does not affect any accrued rights or liabilities of the parties.

14. **Subcontracting**

GBCC may sub-contract all or any part of its rights and obligations under the Contract without the Customer's consent.

15. **Jurisdiction**

The Contract between GBCC and the Customer is made in the State of Victoria, and the parties agree to submit all disputes arising between them to the courts of such State.

16. **Entire Agreement**

16.1. GBCC and the Customer acknowledge that these Terms constitute the entire agreement between them, and that the only enforceable obligations and liabilities of GBCC and the Customer in relation to the subject matter of these Terms is contained herein.

16.2. All representations, communications and prior agreements are superseded by these Terms.

17. **Variation**

GBCC may change these Terms at any time if it has given to the Customer at least 30 days' notice in writing of the proposed change.

18. **Control**

The Customer must immediately provide written notice to the Customer if there is any direct or indirect change in the control of the Customer.