

These terms and conditions (**Terms**) govern the relationship between a Client and Paint Now Pay Later Pty Ltd (**PNPL**) with regard to any and all painting and decorating services as described in a quote (**Quote**).

The Quote is subject to these Terms. If you do not agree to these Terms, you must not engage PNPL to undertake any home decorating painting services.

You will be deemed to have accepted the Quote (and these Terms) if you:

- i. pay the Contract Price (or any part thereof);
- ii. provide written confirmation that you accept the Quote;
- iii. instruct or direct PNPL to deliver the goods; and/or commence the provision of the Works; or
- iv. accept delivery of the goods and/or the provision of the Works.

THE PARTIES AGREE as follows:

1. INTERPRETATION

1.1 Definitions

The following definitions will apply in this Agreement (unless the context indicates otherwise):

Agreement is made up of these Terms and conditions and the Quote (including all schedules, annexure and attachments).

APPs are the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).

Business Day is a day (not Saturday or Sunday) that trading banks are open for business in Adelaide, South Australia.

Claims means all demands, claims, proceedings, penalties, fines, loss and liability (whether criminal or civil, in contract, tort or otherwise).

Client means a person that has engaged PNPL to undertake the Works under a Quote for the Contract Price.

Commencement Date means the date on which PNPL is to start performing the Works, as outlined in the Quote (if any) or such other date as the Parties may agree in writing.

Completion Date means the date on which PNPL completes the Works, as outlined in the Quote (if any) or such other date as the Parties may agree in writing.

Confidential Information of a Party is all technical, financial, commercial and other information (in whatever medium) of or relating to it or its business affairs, which is disclosed or available to, or observed or accessible by, the other Party in connection with this Agreement which:

- (a) is marked as 'confidential', 'sensitive', 'private' or any other similar description; or
- (b) a reasonable person would (given its nature) consider confidential,

but excluding information that:

- (c) is readily available in the public domain without breach of confidentiality; or
- (d) the receiving Party can establish by written records is or has been legally known to, developed by, or acquired by, that receiving Party, independently of this Agreement.

Contract Price means the amounts and/or rates for the Works set out in a Quote.

Delay Event has the meaning given to it in clause 5.2.

Expert has the meaning given to it in clause 20.5.

Force Majeure Event is an act of war, revolution or terrorism; an act of God; adverse weather conditions; labour disputes; civil disturbances; material or labour shortages; an epidemic or pandemic (not including COVID-19); or any other incident beyond the control of PNPL – in each case which could not have been prevented or foreseen through the exercise of reasonable skill and care.

GST means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Law**).

Hazardous Materials has the meaning given to it in clause 10.3(b).

Insolvent is an entity being insolvent (under section 95A of the Corporations Act (Cth)); having an administrator, controller (per section 9 of the Corporations Act) or similar officer appointed to all or any of its property; having taken (or had taken against it) any step for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors; or suffering any event or similar event to those set out in this definition which would restrict its business operations or cause those operations to be placed under the control of a person other than its directors under the laws of its place of incorporation.

Parties means PNPL and the Client, and **Party** means either one of them.

Personnel are the directors, officers, employees, professional advisers, agents or subcontractors of a Party (but the Personnel of the Client does not include PNPL).

Quote means the document agreed upon by the Parties that outlines the Works to be provided by PNPL to the Client.

Site means the location where the Works shall be carried out.

Site Access Date means the date that PNPL must have clear access to the Site as specified in the Quote and where no date is specified, the Commencement Date.

Tax Invoice has the meaning given to that term by the GST Law.

Terms means these terms and conditions.

Variation means an amendment to the Quote pursuant to clause 4.

Warranty has the meaning given to it in clause 15.3.

Works means the painting or decorating services, materials or equipment to be supplied by PNPL to the Client as outlined in a Quote.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- (e) reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) provisions of the Contract must not be construed to the disadvantage of a Party merely on the basis of which Party prepared such a provision;
- (h) the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- (i) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- (j) the word "including" (and related forms including "includes") means "including without limitation";
- (k) a reference to \$ or dollars is to Australian dollars;
- (l) something due to be done on or by a non-Business Day must be done on or by the next Business Day; and
- (m) unless expressly specified, the terms defined in the Quote have the same meaning as this Agreement and vice-versa.

1.3 Precedence

The terms contained in the body of this Agreement prevail over those included in any Quote, annexure or attachment to the extent of any inconsistency. No provision of a Quote, annexure, attachment or

any other agreement between the Parties will take precedence over this clause unless it expressly states that it is intended to do so.

1.4 Notice in writing

Where an action of a Party is required to be evidenced in writing under this Agreement (for example, the provision of a Party's consent or approval, etc), the Parties acknowledge and agree that email communication will satisfy such requirement for the action to be in writing.

2. TERM AND TERMINATION

2.1 Period of Agreement

This Agreement will begin on the Commencement Date and continue until the Completion Date (if any) unless terminated earlier in accordance with this Agreement.

2.2 Termination

- (a) PNPL may terminate this Agreement at any time by providing 30 days written notice.
- (b) Either Party may terminate this Agreement with immediate effect by written notice to the other Party if the other Party:
 - (i) commits a breach of this Agreement which is not remediable;
 - (ii) commits a breach of this Agreement which is capable of remedy, but is not remedied within 14 days after being required by notice to do so; or
 - (iii) becomes Insolvent.

2.3 Consequences of termination

If this Agreement is terminated:

- (a) termination does not affect any accrued rights or liabilities of the Parties;
- (b) the Client must pay the Contract Price for any Works provided up to the date of termination;
- (c) the Client must pay PNPL for any costs and expenses incurred with regard to the performance of the Works completed or not yet completed; and
- (d) any part of the Contract Price paid in advance by the Client for Works not provided to the Client at the date of termination, must promptly be repaid to the Client subject to clause 2.3(c).

2.4 Survivability

The following provisions survive termination or expiry of this Agreement: 1 – (Interpretation); 2.3 – (Consequences of termination); 2.4 – (Survivability); 8 – (Contract Price); 13 – (Confidentiality); 14 – (Privacy); 15 – (Disclaimer); 16 – (Indemnities); 17 – (Liability); 18 – (Insurance); 20 – (Dispute Resolution); 21 – (Notice); 22 – (General), and any other contractual provisions that by their nature are intended to survive termination or expiration of this Agreement.

3. PROVISION OF WORKS

3.1 Performance of Works

PNPL will:

- (a) provide the Works described in the Quote in accordance with the terms of this Agreement;
- (b) perform the Works cost effectively and promptly, in accordance with the timing requirements specified in the Quote or as otherwise agreed in writing with the Client; and
- (c) use appropriate methods and practices, with the skill, prudence and foresight reasonably to be expected of skilled, experienced suppliers of works similar to the Works.

3.2 Obligations of PNPL

PNPL will:

- (a) co-operate with the Client as the Client reasonably requires; and
- (b) comply with all laws, regulations, codes, ordinances, industry standards relevant to the provision of the Works.

3.3 PNPL's Personnel

PNPL must only engage in the provision of the Works to the Client Personnel who are properly qualified and experienced to perform the Works allocated to them, and who exhibit a high standard of work and conduct.

4. VARIATIONS

4.1 Performance of Works

- (a) A Party wishing to vary a Quote must notify the proposed Variation to the other Party in writing.
- (b) For the avoidance of doubt, a necessary Variation of a Quote arises if:
 - (i) the Client wishes to vary the scope of the Works in quantity, quality, character or by any other means; or
 - (ii) the Client provides information not accessible at the date of the Quote that would cause the quantity, quality or character of the Works to differ in any way.
- (c) The Parties must negotiate in good faith:
 - (i) any changes to any Contract Price; and
 - (ii) any impacts which the Variation will have on PNPL's ability to perform its obligations.
- (d) Variations will be reflected in a document (and agreed by both Parties) outlining the change and any identified assumptions and impacts. For the avoidance of doubt, the document reflecting the variation may be:
 - (i) a variation deed or agreement outlining the changes; or
 - (ii) a new Quote that replaces the existing Quote.

5. TIME FOR DOING THE WORK

5.1 Time and Completion

- (a) PNPL shall use best endeavours to commence the Works on the Commencement Date and proceed with the Works in a reasonably expeditious manner, provided sufficient access to the Site has been provided by the Client by the Site Access Date.
- (b) If a Completion Date of the Works has been agreed between the Parties, then PNPL shall use best endeavours to bring the Works to completion by the Completion Date.

5.2 Delay Event

- (a) If the Works are held up as a result of a Delay Event:
 - (i) PNPL will notify the Client as soon as practicable and the Completion Date will be extended by the length of the delay as determined by PNPL, acting reasonably.
 - (ii) PNPL is entitled to claim any reasonable loss and expense as a result a Delay Event.
- (b) For the purposes of this clause 5, a **Delay Event** means a hold up to the Works caused by:
 - (i) The Client failing to give or delaying in giving instructions or directions to PNPL;
 - (ii) someone the Client has asked to do work or supply materials, plant, equipment or goods is delayed or late;
 - (iii) PNPL carrying out Variations or other additional works;
 - (iv) any delay, disruption or stopping of work due to any act or omission of the Client;
 - (v) the delay of any local or other authority in giving approval for all or part of the Works;
 - (vi) bad weather and the effects of bad weather including hot, wet or windy weather;
 - (vii) an act of God (such as fire, earthquake or flood);
 - (viii) a civil disturbance;
 - (ix) an accident;

- (x) a strike or lockout;
- (xi) a Force Majeure Event occurs (subject to clause 19);
- (xii) an act of vandalism or theft;
- (xiii) a delay in getting materials that is beyond the control of PNPL;
- (xiv) any legal action by third parties which affects the Site;
- (xv) any hazardous materials located on the Site;
- (xvi) any discovery of defects on the Site; or
- (xvii) anything else that can be reasonably considered to be beyond the control of PNPL.

6. BUILDING WORKS CONTRACTORS ACT

Where the value of the Works exceeds \$12,000 (excluding GST), the Client acknowledges that prior to accepting the Quote, it has received the Form 1—Notice under section 28(1)(f) of the *Building Work Contractors Act 1995* (SA) from PNPL (irrespective of the form or manner in which it was supplied).

7. ACCESS TO SITE

- (a) The Client must provide PNPL with access to the Site sufficient for the commencement of the Works by the Site Access Date indicated on the Quote, or where no Site Access Date is specified, the Commencement Date.
- (b) In addition to anything specified on the Quote, the Client must ensure that by the Site Access Date (and at all times during the performance of the Works), the Site has running power and water facilities.
- (c) If the Client does not provide access to the Site to PNPL by the Site Access Date, and does not have the utilities required pursuant to clause 7(b), PNPL at its sole discretion:
 - (i) shall be entitled to revise the Quote and the Contract Price to accommodate any changes in circumstance (including but not limited to rise and fall of costs); or
 - (ii) may elect to terminate the Agreement.
- (d) If PNPL elects to terminate the Agreement, the Client shall have no claim against PNPL and shall indemnify the PNPL against any costs or losses incurred.
- (e) For the avoidance of all doubt, a failure to comply with clauses 7(a) and 7(b) constitutes a Delay Event.

8. CONTRACT PRICE

8.1 Contract Price

- (a) In consideration for the provision of Works by PNPL under this Agreement, the Client must pay to PNPL the Contract Price outlined in the Quote.
- (b) Pursuant to this Agreement, PNPL may seek payment for any other claims for costs, loss or damage for which the Client has indemnified PNPL.
- (c) The Client acknowledges that, unless otherwise stated, the Contract Price are exclusive of any tax (including GST) that may be charged by PNPL to the Client. For the avoidance of doubt, PNPL will be entitled to add GST to the Contract Price payable by the Client.

8.2 Cost and disbursements

PNPL is permitted to charge for all costs and expenses incurred in performing the Works as listed in the Quote.

8.3 Invoicing

PNPL will submit a Tax Invoice for the Contract Price and any costs and expenses incurred in accordance with the requirements as set out in a Quote.

8.4 Payment of Invoices

- (a) The Client must pay the Tax Invoices in accordance with the requirements as set out in a Quote.
- (b) Where no method is specified in a Quote, all Tax Invoices must be paid by electronic funds transfer to PNPL's bank account as detailed to the Client in writing, within 7 days from the date of the Tax Invoice.

8.5 Failure to Pay

- (a) If the Client does not make payment of the Contract Price in accordance with the payment terms specified in the Quote, PNPL is entitled to do any or all of the following:
 - (i) charge interest on the outstanding amount at the rate of 12% per year above the cash rate of the Reserve Bank of Australia, accruing daily;
 - (ii) require the Client to pay, in advance, for any Works (of any part of the Works) which have not been performed; or
 - (iii) at its discretion wholly or partially suspend any further Works (or any part of the Works).
- (b) For the avoidance of all doubt, a failure to make payment of the Contract Price in accordance with the term specified in the Quote is classified as a Delay Event.

9. CLIENT'S OBLIGATIONS

9.1 General

During the Agreement, the Client will:

- (a) comply with all laws, regulations, codes, ordinances, industry standards relevant to the provision of the Works.
- (b) co-operate with PNPL as PNPL reasonably requires;
- (c) provide the information and documentation that PNPL reasonably requires; and
- (d) ensure that the Client's Personnel cooperate with and assist PNPL where necessary.

9.2 Entitlement to Charge

- (a) If in the reasonable opinion of PNPL the Client does not comply with clause 9.1 within a reasonable time period to allow PNPL perform the Works, then any additional costs and expenses which are reasonably incurred by PNPL will be paid by the Client.
- (b) Any additional costs and expenses (if any) will be due and payable in accordance with a Quote.

10. REMOVAL OF MATERIALS AND RUBBISH

10.1 Materials

Any materials, chattels or fixtures at the Site which:

- (a) are removed from the Site as a necessary consequence of PNPL carrying out the Works; and
- (b) which are determined by direction of the Client, to not be reinstated as part of or immediately following the Works,

become the property of PNPL at the completion of the Works, unless otherwise agreed in writing by the Parties.

10.2 Rubbish

- (a) PNPL is responsible, at its own cost, for the removal and disposal of all rubbish from the Site created as a necessary consequence by PNPL carrying out the Works, unless otherwise agreed by the Parties or otherwise specified within the Quote.
- (b) The removal and disposal of the rubbish at the Site as a result of PNPL carrying out the Works will be completed within the time frame specified in the Quote, or where no date is specified, within 28 days of the Completion Date.

- (c) For the avoidance of doubt the cleaning obligations under this clause 10.2 extend only to rubbish made by PNPL. Any other mess, debris or rubbish caused by the Client or other contractors is outside the scope of PNPL's obligations.

10.3 Suitability of Site

- (a) Prior to the commencement of the Works, the Site on the Site Access Date must be in a suitable condition that allows the Works to be commenced safely.
- (b) If there is any asbestos or other hazardous materials (**Hazardous Materials**) present at the Site whether known prior to the date of the Quote, the Site Access Date or discovered during the course of the Works:
 - (i) any and all Hazardous Materials shall be removed by a qualified contractor at the Client's cost;
 - (ii) the Site is to be appropriately cleaned by a qualified contractor at the Client's cost;
 - (iii) the Works will not recommence at the Site until PNPL receives written notification that the site is clear of all Hazardous Materials; and
 - (iv) any delay to the Works caused as a result of Hazardous Materials constitute a Delay Event.

11. SUBCONTRACTING

11.1 Subcontracting

PNPL may subcontract any part of the Works.

11.2 Responsibility of PNPL

PNPL remains principally liable for the performance of any subcontracted obligations under this Agreement and is responsible for the acts, omissions, defaults and/or negligence of its authorised subcontractors.

12. FOUNDATION AND STRUCTURES

12.1 Client Warranty

- (a) The Client warrants that all foundations on the Site including walls or other structures erected by anyone other than PNPL, which are associated with the Works, shall be fit for purpose, free of defects and prepared to any standard specified within the Quote.
- (b) PNPL shall not be liable for any loss or damage of any kind resulting from insufficient or defective foundations, walls or other structures in the vicinity of the Works.
- (c) The Client indemnifies PNPL for all costs, loss and damages of any kind that may be incurred as a direct or indirect result of defective structures.

12.2 Discovery of Defects

- (a) If, during the course of the Works, PNPL discovers any defects in any part of the Site or in any existing installation on the Site which in the reasonable opinion of PNPL must be repaired before the Works can commence or continue, PNPL may, suspend the Works and immediately notify the Client of the suspension and the reason.
- (b) If any suspension pursuant to clause 12.2(a) arises:
 - (i) PNPL will notify the Client;
 - (ii) a Delay Event arises; and
 - (iii) PNPL can amend the Contract Price to account for such additional work required to satisfy the Works to the Client.
- (c) PNPL will update the Works by way of a Variation pursuant to clause 4 of this Agreement.
- (d) Failure of the Client to accept a Variation of the Contract Price and Works pursuant to this clause within 14 days of receipt of a Variation shall mean that the Works and this Agreement will automatically cease and be treated as termination pursuant to clause 2.3.

- (e) The Client may request in writing that PNPL continues the Works despite any such defect found pursuant to clause 12.2.
- (f) For the avoidance of all doubt, PNPL will not be liable in any way to the Client for:
 - (i) any Claim that may arise from a failure to notify a Client of a defect found pursuant to clause 12.2; and
 - (ii) the failure of PNPL to uncover any defect whatsoever.

13. CONFIDENTIALITY

13.1 Ownership of Confidential Information

Each Party (a **Recipient**) acknowledges that the other's (**Discloser's**) Confidential Information is, and remains, the property of the Discloser. This Agreement does not convey any proprietary or other interest in one Party's Confidential Information to the other. The Recipient must keep the Discloser's Confidential Information strictly confidential and not disclose it or allow it to become available to any third party, except as provided for in this Agreement. This obligation survives the termination of this Agreement and will continue until the information no longer constitutes Confidential Information of the Discloser.

13.2 Authorised use and disclosure of Confidential Information

- (a) The Recipient may only access and use the Discloser's Confidential Information to perform its obligations or exercise its rights under this Agreement, or with the Discloser's prior consent. The Recipient must comply with any reasonable security and safety procedures stipulated by the Discloser.
- (b) The Recipient may only disclose the Discloser's Confidential Information to its personnel, agents and subcontractors, provided that it restricts access to, and use of, that information on a strictly need to know basis for any specific purpose for which that information was disclosed by the Discloser;
- (c) The Recipient may disclose the Discloser's Confidential Information to the extent required to comply with any law, regulation or stock exchange rule. However, the Recipient must (to the extent possible) minimise the extent of disclosure and give the Discloser prior notice with reasonable details of the proposed disclosure and the relevant Confidential Information to be disclosed.

14. PRIVACY

14.1 Privacy Laws

Each Party must comply (and ensure that its Personnel are aware of and comply) with the APPs, the *Privacy Act 1988* (Cth) and other applicable laws or codes governing personal information in doing any act or engaging in any practice pursuant to this Agreement.

15. DISCLAIMER

15.1 No reliance

Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement.

15.2 Consumer Guarantees

Nothing in the Agreement excludes, restricts or modifies any terms, conditions, warranties or liabilities which are imposed or implied by any statute, including but not limited to the *Competition and Consumer Act 2010* (Cth), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions in this Agreement are made only to the maximum extent permitted by law.

15.3 Warranties

- (a) Subject to this clause 15, PNPL warrants that PNPL will repair any defective workmanship at the Site which become apparent within six (6) months from the date of completion of the Works (**Warranty**).
- (b) The Warranty shall not extend to and the Client shall have no claim against PNPL for:

- (i) yellowing of alkyd enamel paints;
 - (ii) wilful damage by the Client;
 - (iii) negligence by the Client;
 - (iv) improper care and maintenance by the Client;
 - (v) wear and tear not experienced in the ordinary day-to-day use by the Client;
 - (vi) abnormal environmental conditions;
 - (vii) non-compliance with any care instructions provided by PNPL;
 - (viii) unauthorised repair of the Works;
 - (ix) mechanical damage; or
 - (x) the use of adhesives, meaning any item sticking to itself to a surface including but not limited to tapes, blue-tack, gums and resins.
- (c) Where PNPL is directed pursuant to clause 12.2(e) to progress the Works despite defects on the Site, any Warranty under this Agreement with regard to the Works is null and void.

15.4 Exclusions

- (a) To the maximum extent permitted by law, other than the warranties expressly stated in this Agreement, PNPL gives no warranties regarding the provision of the Works and all implied or imposed conditions, warranties and rights are hereby excluded, including (without limitation) warranties in relation to fitness for purpose or merchantability.
- (b) Where any condition, warranty or right is implied or imposed by law and cannot be excluded, the sole liability of PNPL for loss or damage incurred in respect of goods and/or services supplied (or agreed to be supplied) shall be limited to:
 - (i) in the case of goods, at PNPL's option:
 - (A) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (B) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services, at PNPL's option:
 - (A) supplying the services again; or
 - (B) paying the cost of having the services supplied again.
- (c) PNPL will not be liable to the Client (including under this clause 15) to the extent that the Client's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, the Client has a duty to mitigate any losses arising from an act or omission of PNPL.

16. INDEMNITIES

16.1 Indemnity by PNPL

- (a) PNPL must reimburse the Client for, and indemnify and hold them harmless against, all Claims suffered or incurred by the Client arising in connection with:
 - (i) any breach of the Agreement;
 - (ii) fraud, or fraudulent misrepresentation, gross negligence, or wilful misconduct of this Agreement by PNPL or its Personnel; and/or
 - (iii) infringement of a third party's intellectual property rights arising out of any act or omission of PNPL or its Personnel.
- (b) PNPL will not be liable to the Client (including under this clause 16.1) to the extent that the Client's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, the Client has a duty to mitigate any losses arising from an act or omission of PNPL.

16.2 Indemnity by the Client

- (a) The Client must reimburse PNPL for, and indemnify and hold them harmless against, all Claims suffered or incurred by PNPL in connection with or arising out of:

- (i) fraud, or fraudulent misrepresentation, gross negligence or wilful misconduct of this Agreement by the Client or its Personnel;
 - (ii) any information supplied by the Client to PNPL, its employees or suppliers, within or outside the scope of this Agreement;
 - (iii) the loss of or damage to any property or equipment owned or provided by PNPL, the Client or any third party; and/or
 - (iv) any personal injury, illness, disease or death of PNPL Personnel, the Client or any related third party but only to the extent such injury, illness, disease, or death is caused or contributed to by an act or omission of the Client.
- (b) The Client will not be liable to PNPL (including under this clause 16.2) to the extent that PNPL's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, PNPL has a duty to mitigate any losses arising from an act or omission of the Client.

17. LIABILITY

17.1 Indirect or consequential loss

Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature (including any loss of business opportunity, loss of revenue, income, profits or anticipated savings, loss of contracts or business relationships, loss of reputation or goodwill, or loss or corruption of information or data).

17.2 Liability Limit

Notwithstanding any other provision of this Agreement, the liability of PNPL with respect to Works provided under this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise, will not exceed an aggregate amount equal to the amount of the Quote.

18. INSURANCE

PNPL will take out and maintain during the term of the Agreement worker's compensation insurance as prescribed by law and any other insurances from a reputable insurer that required by law and is adequate to cover all risks that usually arise in the Works.

19. FORCE MAJEURE

- (a) If a Force Majeure Event occurs and prevents a Party (**Affected Party**) performing its obligations, under this Agreement, that Party must promptly notify the other Party of the event, the time it started and likely duration, the extent that its obligations are affected and the measures proposed to remedy or mitigate its consequences. The Affected Party's obligations are then suspended solely to the extent it is prevented from performing them by the Force Majeure Event. The Affected Party must:
 - (i) promptly take all necessary steps to remedy or mitigate the Force Majeure Event's effects, so as to resume full performance of its obligations as soon as reasonably possible; and
 - (ii) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations.
- (b) If the delay or failure exceeds 30 days, the other Party may immediately terminate this Agreement on notice to the Affected Party and clause 2.2(b) will apply.
- (c) For the avoidance of all doubt, the Client shall have no claim whatsoever against PNPL for any delay caused by a Force Majeure Event.

20. DISPUTE RESOLUTION

20.1 Handling of Disputes

- (a) Any dispute, difference or disagreement under this Agreement (**Dispute**) must be handled under this clause. However, nothing in this clause prevents a Party seeking urgent interim or interlocutory relief from a court of law to preserve property or prevent irreparable harm.

- (b) If a Party fails to comply with this clause, the other Party need not comply with it before commencing proceedings in any court or tribunal of competent jurisdiction.
- (c) The Parties will continue to perform the Agreement despite any Dispute, provided that either Party may exercise any of its rights under this Agreement at any time.

20.2 Initial negotiations between Parties

- (a) A Party wishing to resolve a Dispute must notify the other Party describing the Dispute in sufficient detail for the other Party to adequately evaluate it (the **Dispute Notice**). The Parties must attempt to resolve any Dispute by agreement through the Client's authorised representative and PNPL's authorised representative.
- (b) The Parties shall then meet within seven days of receipt of the written notice in a genuine attempt to resolve the dispute through the Client's authorised representative and PNPL's authorised representative.
- (c) If the Dispute remains unresolved after this meeting, a second meeting shall be convened within a further fourteen (14) days in a genuine attempt to resolve the Dispute.
- (d) If the Dispute remains unresolved after the second meeting, then either Party may escalate the Dispute or difference by whichever means they see fit, but must not do so prior to the exhaustion of the dispute resolution process outlined in this clause 20.1.
- (e) For the avoidance of all doubt, the discussions (and any documentation tendered in connection with them) will be solely to resolve the Dispute on a "without prejudice" basis (whether or not expressly designated).
- (f) Non-payment by the Client is excepted from the above process and the Painting Contractor may take any lawful steps necessary to expedite an overdue payment, including actions pursuant to this Contract and the *Building Work Contractors Act 1995*.

20.3 Mediation

If those discussions fail to resolve the Dispute, a mediator will be selected by agreement of the Parties, or failing agreement within 10 Business Days, by The Australian Commercial Disputes Centre (ACDC) under its "Guidelines for Commercial Mediation" (on the request of either Party). The Parties will then use their reasonable efforts to resolve the dispute by mediation under ACDC's "Guidelines for Commercial Mediation".

20.4 Termination of mediation

Either Party may terminate the mediation at any time on notice to the other Party and the mediator.

20.5 Independent Inspection

- (a) If the Dispute is not resolved by mediation, an independent expert (**Expert**) who specialises in painting dispute resolution will be selected by mutual agreement of the Parties; or in the absence of mutual agreement, the Master Builders Association of South Australia.
- (b) The Expert must visit the Site and inspect the Works in Dispute.
- (c) The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the Parties within a maximum of one (1) months of the matter being referred to the Expert.
- (d) Each Party will cooperate with the Expert as the Expert reasonably requires and submit all documentation that the Expert reasonably requires to make a decision under this clause.
- (e) Each Party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching his determination.

20.6 Further Proceedings

If the Dispute is not resolved by the Expert, either Party may commence proceedings in any court or tribunal of competent jurisdiction.

20.7 Costs

Each Party shall bear its own costs of any contractual or legal matters or in a Dispute, and share the cost of any mediator or Expert unless otherwise expressly provided for in a determination or judgement.

21. NOTICE

A notice, request, demand, consent or approval (**notice**) from a Party to another (**Recipient**) must be in writing, addressed to Recipient and delivered by one of the following means (deemed delivery and receipt being as specified below for each method, provided that if the provisions below would deem a notice to be delivered / received on a non-Business Day or after 4pm on a Business Day, then the notice will be deemed to have been delivered / received on the next Business Day):

- (a) delivered to Recipient's address – deemed delivered/received at date and time of delivery;
- (b) sent by registered mail to Recipient's address – deemed delivered/received on the third Business Day after posting (within Australia) or on the tenth Business Day after posting (outside Australia);
- (c) emailed to Recipient's email address (deemed delivered/received when the sender gets a confirmation message from Recipient's mail server indicating that the message was received by Recipient without error)

The address and email address of each Party is specified in a Quote and is subject to any updates notified by either Party in writing.

22. GENERAL

22.1 Governing law and Jurisdiction

This Agreement is governed by the Laws in force in the State of South Australia, Australia. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts in Adelaide, South Australia and waives any objection to proceedings in any such court on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

22.2 Entire agreement

This Agreement supersedes all previous agreements, discussions or understandings whether verbal or in writing in respect of its subject matter and is the entire agreement of the parties with respect to that subject matter.

22.3 Relationship of parties

Nothing in this Agreement is to be construed as constituting one Party as employer, agent or partner of the other Party or in joint venture with the other Party. No Party has authority to bind or purport to bind the other Party. For the avoidance of doubt, PNPL is an independent contractor of the Client.

22.4 Amendment

Any amendment, consent to modification, supplement, replacement, novation, or assignment of any provision of this Agreement must be in writing, and is effective only if signed by an authorised representative of each Party.

22.5 Assignment

No Party may assign, novate or create an interest in its rights under this Agreement without the prior written consent of the other Party.

22.6 Waivers

A waiver of any right, power, authority, discretion or remedy must be in writing, signed by the Party granting the waiver. A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy does not result in a waiver of that right, power, authority, discretion or remedy.

22.7 Severability

All or part of any provision of this Agreement that is illegal, invalid or unenforceable will be severed from this Agreement and the remaining provisions (and parts of provisions) will continue in force.