



Ben Moloney's Roller Doors Pty Ltd

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Standard Terms and Conditions of Contract

Supremacy of Terms

These Terms and Conditions of Contract shall supersede and take precedence over any Purchase Order terms, conditions, or other contractual terms provided by the Client or Purchaser. Any conflicting or additional terms contained in a Purchase Order or any other document issued by the Client shall be of no effect unless expressly agreed in writing by Ben Moloney's Roller Doors (BMRD).

1. Definitions

- (a) Client means the party so named on the Quotation for which the services are being completed for;
- (b) Parties means Ben Moloney's Roller Doors (BMRD) and the Client;
- (c) BMRD means Ben Moloney's Roller Doors (ABN 92 621 150 650);
- (d) Premises means the buildings, structures, foundations and subgrade at the Site;
- (e) Site means the location where the Works shall be carried out; and
- (f) Works means the services as described within the Quotation.

2. Agreement

BMRD is engaged by the Client to carry out and complete the Works pursuant to the terms of this Contract. In consideration for the performance of the Works, the Client will pay to BMRD the Contract Price by the time indicated by this Contract.

This Contract is comprised of:

- (a) these standard terms and conditions;
- (b) the Quotation; and
- (c) any other referenced documents.

3. Material

The Client acknowledges that it has read the Quotation and consents to the use of all specific materials and products listed within the Quotation, selected by the Client and/or by BMRD using skill and experience, and all incidental products reasonably necessary in carrying out the Works, irrespective of the content of any standards or recommendations.

4. Site

The Client must provide uninterrupted access to the Site sufficient for the commencement of the Works by the Site Access date indicated on the Quotation, or where no date is specified, within 7 days of the date of this Contract. Should the Client not provide access by this time, BMRD shall be entitled to revise the Quotation to accommodate any changes in circumstance (including but not limited to rise and fall of costs), or may elect to terminate the Contract, at its sole discretion.

If BMRD elects to terminate, the Client shall have no claim whatsoever against BMRD.

5. Removal of Fixtures

Any materials, chattels or fixtures (e.g. old doors) at the Site which are removed as a necessary consequence of carrying out the Works and which are determined by the Parties, or by direction of the Client, to not be reinstated as part of or immediately following the Works, become the property of BMRD at the completion of the Works unless otherwise agreed in writing by the Parties or excluded in the Quotation.

If BMRD do not wish to remove the existing materials, chattels or fixtures, then disposal can be arranged at the Client's cost.

6. Removal of Rubbish

The Client shall be responsible, at its cost, for the removal and disposal of all rubbish from the Site created as a necessary consequence of carrying out the Works, unless otherwise agreed by the Parties or otherwise specified within the Quotation.

7. Assignment

BMRD may assign any part (but not the whole) of the Works to a subcontractor at its sole discretion. Any part of the Works completed under such assignment will have the same warranties under this Contract attached, as if BMRD had completed that part of the Works itself.

8. Foundations

The Client warrants that all foundations, walls or other structures erected by anyone other than BMRD, which are associated with the Works, shall be fit for purpose, free of defects and prepared to a sufficient standard to support the new doors provided/installed by BMRD.

BMRD shall not be liable for any loss or damage of any kind resulting from insufficient or defective foundations, walls or other structures. The Client indemnifies BMRD for all costs, loss and damages of any kind that may be incurred as a direct or indirect result of defective structures.

9. Variations

If, following the execution of this Contract, the Client varies the scope of the Works in quantity, quality, character or by any other means, or if the Client provides information not accessible at the date of this Contract that would cause the Works to differ in any way, then the change shall be valued by BMRD and added or deducted from the Contract Price, with labour being charged at \$100/hour (excl GST) and materials and plant being charged at cost plus 10% mark-up.

10. Payment

10.1 Standard Terms

Unless otherwise agreed in writing, the Client agrees to pay 50% of the Contract Price at time of execution of the Contract, with the balance of the Contract Price and any variation costs being due and payable on the day of installation. BMRD shall make claims for payment by submitting invoices to the Client. The Client must make payment in accordance with these terms.

10.2 Purchase Orders

BMRD may, at its sole discretion, accept a valid Purchase Order from the Client in place of the 50% upfront payment. Acceptance of a Purchase Order does not alter or override these Terms and Conditions, which shall take precedence over any terms or conditions contained within the Purchase Order.

10.3 Builders

Where the Client is a licensed builder, BMRD may, at its sole discretion, accept payment on 30-day terms from the date of invoice. These Terms and Conditions shall take precedence over any builder's purchase order terms, unless expressly agreed in writing by BMRD.

10.4 Insurance Work

For works undertaken as part of an insurance claim, payment shall be due in full upon completion of the Works, unless otherwise agreed in writing by BMRD.

10.5 Delays and Progress Payment

Should the commencement or completion of the Works be delayed by more than 14 days for reasons not attributable to BMRD, the Client agrees that BMRD may issue, and the Client must pay, a progress payment equal

to 25% of the Contract Price. This amount shall be due and payable immediately upon invoice, in addition to any other payments required under this Contract.

10.6 Retentions

BMRD shall not accept any retention monies being withheld by the Client under this Contract.

All invoices are payable in full as per the terms outlined herein, without deduction or retention of any kind.

11. Warranties

BMRD warrants that, subject to the conditions of this Contract, it will repair any defective workmanship which becomes apparent within six months from the date of completion of the Works.

The warranty shall not extend to areas of the Works that have been subject to wilful damage, negligence, improper care or maintenance, excessive wear and tear, abnormal environmental conditions, unauthorised repair, alteration, or mechanical damage.

12. Insurance, Indemnity and Liability

BMRD shall maintain workers' compensation insurance sufficient to cover liabilities arising out of claims in connection with its legal obligations.

The Client shall indemnify BMRD against any claim arising from or in connection with property damage or personal injury except to the extent caused by BMRD.

The total aggregate liability owed by BMRD to the Client for any damages, claims, losses and expenses is limited to 10% of the Contract Price.

13. Protection of the Works

Care of the Works shall be the responsibility of the Client whilst performing the Works, except as otherwise expressed within this Contract.

Risk in the Works performed and/or materials supplied shall pass to the Client as soon as they are carried out/supplied, irrespective of whether payment has been made.

14. Time

BMRD shall proceed with the Works in a reasonably expeditious manner, provided sufficient access to the Site has been provided by the Client.

BMRD will not be responsible for delays caused by factors outside its control, including adverse weather, labour disputes, acts of God, force majeure, material shortages, or delays by the Client (including late payment).

15. Dispute Resolution

If a dispute arises, the aggrieved party shall give written notice to the other. The parties shall meet within seven days to attempt resolution.

If unresolved, a second meeting shall be held within seven days. If still unresolved, either party may escalate the matter by lawful means.

Non-payment is excluded from this process and BMRD may take immediate lawful action to recover overdue payments.

16. Termination

BMRD may terminate this Contract for substantial breach by the Client, including insolvency or non-payment.

The Client may terminate for substantial breach by BMRD which cannot be remedied, but only after ten days written notice.

On termination, the Client must pay for all works completed and materials purchased to date.

17. Miscellaneous

(a) Waiver – A waiver of a provision does not constitute a continuing waiver.

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(b) Severability – Any provision that is illegal or unenforceable shall be read down or severed without affecting the rest.

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(c) Perceived disadvantage – Provisions must not be construed to the disadvantage of the party who prepared them.

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(d) Notice – Notices may be served by prepaid post to the Client's last known address.

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(e) Applicable law – The law of Western Australia governs this Contract.

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(f) Costs – Each party bears its own costs unless determined otherwise by a judgment or award.