
Sure Pump Concrete Pumping – Terms & Conditions of Trade

1. Definitions

- 1.1 “Sure Pump” means Civil Restorations Pty Ltd T/A Sure Pump Concrete Pumping, its successors and assigns or any person acting on behalf of and with the authority of Civil Restorations Pty Ltd T/A Sure Pump Concrete Pumping.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Sure Pump to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between Sure Pump and the Customer in accordance with clause 5 below.

2. Acceptance

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

3. Change in Control

- 3.1 The Customer shall give Sure Pump not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Sure Pump as a result of the Customer’s failure to comply with this clause.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to Sure Pump as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any materials or Services on the Customer’s behalf and/or to request any variation to the works on the Customer’s behalf (such authority to continue until all requested works have been completed or the Customer otherwise notifies Sure Pump in writing that said person is no longer the Customer’s duly authorised representative).
- 4.2 In the event that the Customer’s duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise Sure Pump in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to Sure Pump for all additional costs incurred by Sure Pump (including Sure Pump’s profit margin) in providing any works, materials, Services or variation/s requested by the Customer’s duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Price and Payment

- 5.1 At Sure Pump’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Sure Pump to the Customer; or
 - (b) Sure Pump’s 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 Sure Pump reserves the right to change the Price if a variation to Sure Pump’s quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Sure Pump in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, obscured building defects, safety considerations, prerequisite work by any third party not being completed or hidden pipes and wiring in walls etc which are only discovered on commencement of the Services) will be charged for on the basis of Sure Pump’s quotation and will be shown as variations on the invoice.
- 5.3 At Sure Pump’s sole discretion a deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Sure Pump, which may be:
 - (a) on delivery of the Goods;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Sure Pump.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Customer and Sure Pump.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Sure Pump an amount equal to any GST Sure Pump must pay for any supply by Sure Pump under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must

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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 Goods

- 6.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that Sure Pump (or Sure Pump’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address. The Services shall commence from the time of the arrival on site of Sure Pump (or Sure Pump’s nominated carrier), may include travelling charges, and are completed once the pumping plant is washed, packed up and ready to leave the site.
- 6.2 The Customer (or the Customer’s representative) shall be required to sign Sure Pump onto the site at the time of Sure Pump’s arrival, and in so doing is deemed to agree to pay for the Services as per Sure Pump’s specified payment terms.
- 6.3 At Sure Pump’s sole discretion the cost of delivery is in addition to the Price.
- 6.4 At Sure Pump’s sole discretion, a minimum service fee (equal to four (4) hours labour at Sure Pump’s standard hourly rate, plus travel costs) shall be applicable to all Services.
- 6.5 Sure Pump’s obligation is to transfer concrete supplied at ground level by the customer (as subject to clause 10.5). Under no circumstances shall Sure Pump be responsible for settling the concrete in position or finishing the surface thereof.
- 6.6 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Sure Pump shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.7 Sure Pump may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.8 Subject to clause 6.9 it is Sure Pump’s responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.9 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Sure Pump claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Sure Pump’s control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Sure Pump that the site is ready.
- 6.10 Sure Pump shall not be liable for any delay in arrival on site or commencement of the Services due to any cause beyond Sure Pump’s control (including, but not limited to, Government intervention or regulation, council conditions, industrial dispute, breakdown of plant, transport delays, or accidents).
- 6.11 Any time or date given by Sure Pump to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Sure Pump will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Sure Pump is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Sure Pump is sufficient evidence of Sure Pump’s rights to receive the insurance proceeds without the need for any person dealing with Sure Pump to make further enquiries.
- 7.3 The Customer acknowledges that variations of colour and texture are inherent in concrete. Sure Pump shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.
- 7.4 Detailed drawings of any services that will be embedded in the concrete are to be provided to Sure Pump prior to commencement of any works. Whilst all due care will be taken no liability will be accepted by Sure Pump for damage to the services or any other element embedded in the concrete.
- 7.5 The Customer acknowledges that the curing time for concrete can be affected by elements such as temperature or the weather as such Sure Pump offers no guarantee as to the length of time the curing process will take.
- 7.6 Sure Pump offers no guarantee against cracking of concrete.
- 7.7 Where Sure Pump gives advice or recommendations to the Customer, or the Customer’s agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then Sure Pump shall require the Customer or their agent to authorise commencement of the works in writing. Sure Pump shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the works.
- 7.8 Where the Customer has supplied materials for Sure Pump to complete the Services, (including, but not limited to, concrete, ready-mixed mortar, cement and unwashed yellow bush sand) the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Materials. Sure Pump shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of Materials supplied by the Customer.
- 7.9 Sure Pump will provide a pumping plant and pipe line with fittings in good working order and condition. In the event of any breakdown or failure of Sure Pump’s equipment for whatever reason, Sure Pump shall not be liable for any

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loss or damage that may be occasioned by the Customer. In the event of such breakdown or failure, the Customer shall not be responsible for any labour charges whilst the plant is being repaired or replaced, provided that such breakdown or failure is not due to any action of the Customer.

- 7.10 Any advice, recommendation, information, assistance or service provided by Sure Pump in relation to Goods or Services supplied is given in good faith, is based on Sure Pump's own knowledge and experience and shall be accepted without liability on the part of Sure Pump and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.

8. Underground Locations

- 8.1 Prior to Sure Pump commencing any work the Customer must advise Sure Pump of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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.
- 8.2 Whilst Sure Pump will take all care to avoid damage to any underground services the Customer agrees to indemnify Sure Pump 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 8.1.

9. Accuracy of Customers Plans and Measurements

- 9.1 Sure Pump shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Sure Pump accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Sure Pump places an order based on these measurements and quantities. Sure Pump accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

10. Customer's Responsibilities

- 10.1 The Customer shall ensure that Sure Pump has clear and free access to the work site at all times to enable them to undertake the works. Sure Pump 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) unless due to the negligence of Sure Pump.
- 10.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, or other concrete pumping equipment as may be deemed necessary by Sure Pump. The Customer agrees to indemnify Sure Pump against all costs incurred by Sure Pump in recovering such vehicles in the event they become bogged or otherwise immovable.
- 10.3 The Customer shall ensure that the correct traffic and pedestrian measures are in place. Failure to do so will result in the Customer becoming liable for any costs incurred to Sure Pump.
- 10.4 The Customer agrees to supply whatever is required for the Services to be provided (including adequate space, water, and a compressor for the blowing of long lines), and will make proper provision for the uninterrupted laying of pipes and pumping of concrete.
- 10.5 In order for Sure Pump to provide the Services, the Customer shall supply a pump-able concrete which is suitable for Sure Pump's pumping plant, and shall also supply ready-mixed mortar, cement or unwashed yellow bush sand to prime all lines. Alternatively, Sure Pump may agree to supply such products for an additional fee. Sure Pump accepts no responsibility for the slump, strength, quality or suitability of the concrete pumped, nor for any defects, inadequacy or failing of foundations, formwork or any other part of the site, or of the Customer's instructions. Sure Pump may complete the Services without reporting any apparent defects or failings aforesaid. Sure Pump reserves the right to not pump any loads that are out of spec (i.e. Hot Loads, Shoot mixes, etc).
- 10.6 The Customer shall provide and maintain, in position, effective screening to protect against damage caused by any malfunction of the pump or pipe line.
- 10.7 The Customer shall supply an area suitable for washing out Sure Pump's equipment and for depositing all unused concrete and slurry from Sure Pump's hose and hopper.
- 10.8 Sure Pump is not responsible for the removal of rubbish (including trade waste) from or clean-up of the building/constructions site/s, nor for any damage or waste created by the Readymix truck. This is the responsibility of the Customer or the Customer's agent.
- 10.9 The Customer further acknowledges that, in the case of high-rise jobs, the Customer shall maintain and control all pipe line (according to the standards of the relevant code of practice) except Sure Pump's lines between the pump and the stack. On high-rise sites, the Customer shall also provide a shut-off valve at the base of the stack.
- 10.10 It is further agreed that:
- (a) the Customer will supply temporary lighting, toilet, eating and first aid facilities if required; and
 - (b) the Customer will advise all amenity locations (including without limitation, water, gas, electricity, telephone or any other underground amenity) to Sure Pump prior to delivery.

11. Title

- 11.1 Sure Pump and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Sure Pump all amounts owing to Sure Pump; and
 - (b) the Customer has met all of its other obligations to Sure Pump.
- 11.2 Receipt by Sure Pump 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to Sure Pump on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Sure Pump and must pay to Sure Pump the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Sure Pump and must pay or deliver the proceeds to Sure Pump on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Sure Pump and must sell, dispose of or return the resulting product to Sure Pump as it so directs.
 - (e) the Customer irrevocably authorises Sure Pump to enter any premises where Sure Pump believes the Goods are kept and recover possession of the Goods.
 - (f) Sure Pump may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Sure Pump.
 - (h) Sure Pump may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer 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 Goods that have previously been supplied and that will be supplied in the future by Sure Pump to the Customer.
- 12.3 The Customer 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 Sure Pump 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 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Sure Pump 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 Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Sure Pump;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Sure Pump;
 - (e) immediately advise Sure Pump of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 Sure Pump and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Sure Pump, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by Sure Pump under clauses 12.3 to 12.5.
- 12.9 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.

13. Security and Charge

- 13.1 In consideration of Sure Pump agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies Sure Pump from and against all Sure Pump's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Sure Pump's rights under this clause.

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- 13.3 The Customer irrevocably appoints Sure Pump and each director of Sure Pump as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Customer must inspect the Goods on delivery and must within two (2) days of delivery notify Sure Pump in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Sure Pump to inspect the Goods.
- 14.2 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**).
- 14.3 Sure Pump acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Sure Pump makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Sure Pump's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, Sure Pump's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If Sure Pump is required to replace the Goods under this clause or the CCA, but is unable to do so, Sure Pump may refund any money the Customer has paid for the Goods.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, Sure Pump's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Sure Pump at Sure Pump's sole discretion;
 - (b) limited to any warranty to which Sure Pump is entitled, if Sure Pump did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) Sure Pump has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Sure Pump 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 Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Sure Pump;
 - (e) fair wear and tear, any accident, or act of God.
- 14.10 Notwithstanding anything contained in this clause if Sure Pump is required by a law to accept a return then Sure Pump will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where Sure Pump has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Sure Pump.
- 15.2 The Customer warrants that all designs, specifications or instructions given to Sure Pump will not cause Sure Pump to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Sure Pump against any action taken by a third party against Sure Pump in respect of any such infringement.
- 16. Default and Consequences of Default**
- 16.1 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 Sure Pump's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes Sure Pump any money the Customer shall indemnify Sure Pump from and against all costs and disbursements incurred by Sure Pump in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Sure Pump's collection agency costs, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies Sure Pump may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Sure Pump may suspend or terminate the supply of Goods to the Customer. Sure Pump will not be liable to the Customer for any loss or damage the Customer suffers because Sure Pump has exercised its rights under this clause.

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- 16.4 Without prejudice to Sure Pump's other remedies at law Sure Pump shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Sure Pump shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Sure Pump becomes overdue, or in Sure Pump's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes 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 Customer or any asset of the Customer.

17. Compliance with Laws

- 17.1 The Customer and Sure Pump 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.
- 17.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 17.3 The Customer 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.

18. Insurance

- 18.1 Sure Pump shall maintain during the Services Public Liability Insurance cover of not less than five million dollars (\$5M) for any one occurrence and which covers liabilities to third parties in respect of personal injury, death and loss or damage to property which may arise out of or in connection with the carrying out of the Services. It is the Customer's responsibility to ensure that they are similarly insured.
- 18.2 Notwithstanding clause 18.1 Sure Pump shall be liable for and shall indemnify the building owner or other third party against any legal liability, loss, claim, or proceedings whatsoever arising under any statute, or at common law, in respect of personal injury to or death of, any person whomsoever arising out of, or in the course of, or caused by the execution of the Services, **unless** due to any act or neglect of the building owner, or of any person other than Sure Pump for whom the building owner is responsible, and excepting personal injury to, or death of any person for whom the building owner is responsible by virtue of any statute relating to workers compensation or employer's liability.

19. Cancellation

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

20. Dispute Resolution

- 20.1 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. Privacy Act 1988

- 21.1 The Customer agrees for Sure Pump to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Sure Pump.
- 21.2 The Customer agrees that Sure Pump may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 21.3 The Customer consents to Sure Pump being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

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- 21.4 The Customer agrees that personal credit information provided may be used and retained by Sure Pump for the following purposes (and for other purposes as shall be agreed between the Customer and Sure Pump or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by Sure Pump, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 21.5 Sure Pump may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 21.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that Sure Pump is a current credit provider to the Customer;
 - (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 Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Sure Pump, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by Sure Pump has been paid or otherwise discharged.

22. Building and Construction Industry Security of Payments Act 1999

- 22.1 At Sure Pump's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 22.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

23. General

- 23.1 The failure by Sure Pump to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Sure Pump'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 Sure Pump has its principal place of business, and are subject to the jurisdiction of the Balmain Court in that state.
- 23.3 Subject to clause 14 Sure Pump shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Sure Pump of these terms and conditions (alternatively Sure Pump's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Sure Pump nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 Sure Pump may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.6 The Customer agrees that Sure Pump may amend these terms and conditions at any time. If Sure Pump makes a change to these terms and conditions, then that change will take effect from the date on which Sure Pump notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Sure Pump to provide Goods to the Customer.
- 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 Customer 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.