

GENERAL TERMS OF SALE OF XLAM AUSTRALIA PTY LTD - COMMERCIAL CUSTOMERS

These General Terms of Sale ("**XLam Terms**") are between XLam Australia Pty Ltd ("**XLam**") and the person, company or other entity purchasing products ("**Products**") and any associated services ("**Services**") from XLam from time to time ("**Customer**").

1. Contract

- 1.1. Every contract for the supply of Products and/or Services by XLam to the Customer includes the XLam Terms, the Customer Application Form signed by the Customer (if any) and the relevant Quotation (including the "Contract Schedule" attached to the Quotation ("**Contract Schedule**") and Quotation Acceptance Form signed by the Customer (if any) and other documents specified as included in the Contract Schedule ("**Contract**"). In the event of any conflict or inconsistency between the terms of the documents comprising the Contract, then unless otherwise agreed, the following order of precedence will apply to resolve the conflict or inconsistency (documents higher in the list prevailing over documents lower in the list):
- 1.1.1. the Contract Schedule (excluding any Annexures and attachments);
 - 1.1.2. the Quotation;
 - 1.1.3. the XLam Terms;
 - 1.1.4. plans and drawings (if any), with plans and drawings to a larger scale prevailing over plans and drawings with a smaller scale;
 - 1.1.5. specifications (if any); and
 - 1.1.6. any other contract documents.
- 1.2. The Contract shall supersede and replace all previous submissions, representations, warranties, understandings, agreements or undertakings whether verbal or in writing and shall take precedence over any other term, condition, agreement or other document.
- 1.3. The XLam Terms may be changed at any time by agreement in writing by XLam and the Customer.

2. Quotation

- 2.1. XLam may provide a quotation for Products and/or Services to a Customer ("**Quotation**"). To order the Products and/or Services set out in the Quotation, the Customer must sign and return (by mail, email or fax) the XLam Quotation Acceptance Form to XLam.
- 2.2. Unless otherwise specified in the Quotation, a Quotation will be open for acceptance by the Customer within thirty (30) days from the date of the relevant Quotation.
- 2.3. There will be no Contract in place unless and until a Customer's signed Quotation Acceptance Form is acknowledged by XLam as having been received and XLam accepts and confirms in writing that it agrees to provide the Products and/or Services as set out in the relevant Quotation.
- 2.4. The Customer may not cancel a Contract once a signed Quotation Acceptance Form has been accepted and confirmed by XLam except in accordance with these XLam Terms. The Customer acknowledges and agrees that, where a Contract is cancelled by the Customer, XLam may charge the Customer for any costs and expenses incurred and loss of profits suffered by XLam in respect of the relevant Contract up to the date of cancellation.

3. Price

- 3.1. The price of the Products and Services are set out in the Contract Schedule, subject to any variations under clause 18 ("**Price**").
- 3.2. Unless otherwise stated, the Price does not include GST or any other applicable taxes or duties which are payable by the Customer in addition to the Price. The Customer shall be liable for all excise, sales, GST or any other tax, charge or government impost (domestic or foreign) upon the Services or any part of the Services or upon the manufacture, use, sale or delivery of the Products or any part of the Products in addition to the Price. Where the Services are subject to GST, the Customer must pay GST at the same time as payment for the Services is made.
- 3.3. All freight, packaging, storage and other relevant costs are charged to the Customer's account as stated in the Quotation or on any progress payment claim, invoice or other document issued by XLam to the Customer.
- 3.4. XLam reserves the right to increase the Price by the amount of any increase in the cost of manufacture or supply of the Products that is outside the control of XLam (including exchange rate movements) between the date of the Quotation and the date of delivery of the Products to the Customer. Any Price increase pursuant to this clause will be notified to the Customer in writing and, for the avoidance of doubt, shall not be considered a variation pursuant to clause 18.
- 3.5. For the avoidance of doubt, the Price set out in a Quotation is valid only for the stated validity period of the relevant Quotation. Where a Quotation is accepted by the Customer outside such validity period, the Price set out in the Quotation may be increased by XLam by notice in writing to the Customer.

4. Payment

- 4.1. XLam may require the Customer to pay a deposit as set out in the Quotation.
- 4.2. The Customer must pay to XLam the Price:
- 4.2.1. for work or goods for which XLam accepted a lump sum, the lump sum;
 - 4.2.2. for work or goods for which XLam accepted rates, the sum ascertained by multiplying the relevant quantity of the work or goods carried out or provided under the Contract by the rate accepted by XLam for the work or goods;
 - 4.2.3. for work or goods for which XLam has accepted any other mechanism for the calculation of the Price, an amount calculated in accordance with that mechanism,
- adjusted by any additions or deductions made pursuant to the Contract.
- 4.3. XLam may submit payment claims for the Price progressively in accordance with any times specified in the Contract Schedule, or if relevant times are not specified:
- 4.3.1. monthly progress payment claims may be issued by XLam to the Customer on or before the 25th day of each month; and
 - 4.3.2. Any such progress payment claims issued after the 25th day of a month will be deemed to have been issued on the 25th day of the immediately following month.
- 4.4. If the Customer intends to pay XLam less than the amount set out in the relevant progress payment claim issued by XLam, the Customer must, not later than ten (10) Business Days after the date on which the progress payment claim referred to in clause 4.3 above was received (or is deemed to have been received), issue to XLam a progress payment schedule which shall:
- 4.4.1. identify XLam's progress payment claim to which it relates;
 - 4.4.2. set out the amount that will be paid for that progress payment claim and show how such amount has been calculated; and
 - 4.4.3. provide sufficient detail and reasons why part of XLam's progress payment claim is not being paid.
- 4.5. Unless otherwise stated in the Contract Schedule, not later than fifteen (15) Business Days after the date on which the progress payment claim referred to in clause 4.3 above was received (or is deemed to have been received), the Customer will pay to XLam the amount set out in the relevant progress payment claim issued by XLam pursuant to clause 4.3 or progress payment schedule issued by the Customer pursuant to clause 4.4, as applicable.
- 4.6. If any amount the subject of a progress payment claim issued by XLam is not paid by the Customer, XLam may claim for that part in a future progress payment claim, including, without limitation, if it considers that the reason given in the Customer's progress payment schedule for that part no longer applies.
- 4.7. XLam shall issue a final payment claim to the Customer within a reasonable period following delivery of the Products and/or practical completion of the Services, including all variations under clause 18. If the Customer intends to pay XLam less than the amount claimed in the final payment claim, the Customer must issue a final payment schedule not later than ten (10) Business Days after the date on which the final payment claim was received, which shall include the information set out in clauses 4.4.1 – 4.4.3 where applicable. Not later than fifteen (15) Business Days after the date on which the final payment claim was received, the Customer will pay XLam the amount set out in the final progress payment claim or final payment schedule, as applicable.
- 4.8. Without limiting any other right of XLam, if XLam does not agree with a progress payment schedule or final payment schedule, XLam may notify a dispute in accordance with clause 21.
- 4.9. The Customer shall not withhold:
- 4.9.1. any retention sums unless otherwise specified in this Contract or with the prior written consent of XLam; or
 - 4.9.2. payment of any amount from XLam on the basis that it has not received payment from a third party.
- 4.10. XLam may include offsite materials claims in any progress payment claim issued in accordance with clause 4.
- 4.11. Interest may be charged by XLam on any amount owing from the due date for payment of such amount at a rate of 10% per annum calculated on a daily basis from the due date for payment until the amount owing (including interest) is paid in full.

- 4.12. In addition to interest charged in accordance with clause 4.11, if any amount remains unpaid by the Customer after thirty (30) days from the due date for payment of that amount then an administration fee of \$20.00 or 10.00% of the overdue amount (up to a maximum of \$200), whichever is the greater, shall be charged to the Customer and be immediately due and payable by the Customer on demand by XLam.
- 4.13. If XLam at any time deems the credit of the Customer to be unsatisfactory, it may immediately terminate the Contract or any credit arrangement with the Customer or require the Customer to pay the Price before the delivery of any Products or the performance of any Services.
- 5. General Obligations of XLam**
-
- 5.1. XLam shall:
- 5.1.1. supply the Products to the Customer as set out in the Quotation;
- 5.1.2. perform the Services for the Customer as set out in the Quotation; and
- 5.1.3. promptly advise the Customer in writing if any further information is required from the Customer in respect of the supply of Products or performance of Services.
- 5.2. In providing the Services, XLam will use the degree of skill, care and diligence reasonably expected of a person providing such services.
- 5.3. XLam may subcontract the performance of any Services to be provided by XLam under the Contract.
- 5.4. Where performance of the Contract requires XLam to be on the Customer's work site or premises, XLam shall comply with all applicable statutes, regulations and bylaws and any reasonable directions and instructions given by the Customer to XLam and its employees and agents.
- 5.5. XLam shall rectify any damage caused to the Customer's site by XLam's negligence or breach of this Contract.
- 6. General Obligations of the Customer**
-
- 6.1. The Customer shall pay the Price for the Products and Services as set out in the Quotation in accordance with clause 3.1
- 6.2. The Customer shall provide XLam with all information that is relevant to the manufacture and supply of the Products or performance of the Services and any other information reasonably requested by XLam. The Customer warrants that all information provided to XLam is accurate and complete in all respects.
- 6.3. The Customer shall comply with all reasonable directions and instructions given by XLam to the Customer and its employees and agents.
- 6.4. Where applicable, the Customer will be responsible, at its cost, for providing XLam with safe, suitable, timely, clear and unimpeded access to the Customer's site and work area for XLam's vehicles, materials, employees and agents, plant and equipment as necessary for all deliveries of Products or performance of Services.
- 6.5. Where performance of the Contract requires XLam to be on the Customer's work site or premises:
- 6.5.1. the Customer shall comply with all applicable statutes, regulations and bylaws;
- 6.5.2. the Customer shall obtain at its own expense all licences and approvals that may be required unless otherwise agreed in writing with XLam; and
- 6.5.3. the Customer warrants that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards.
- 6.6. The Customer shall:
- 6.6.1. ensure that all Products are handled and used in line with XLam's (or any other manufacturer's) written instructions, recommendations and/or guidelines; and
- 6.6.2. promptly inform XLam if there is any suspected design or manufacturing fault in respect of a Product.
- 7. Customer Acknowledgements**
-
- 7.1. The Customer acknowledges that where XLam's vehicles, materials, plant and equipment are located on the Customer's site, it will be held by it on the site or otherwise in its possession and control as bailee only (under a bailee arrangement of a term of less than one year) and that title to and ownership of all of XLam's property shall at all times remain with XLam. The Customer shall have no right, title or interest in XLam's property.
- 7.2. The Customer acknowledges the following in relation to timber Products supplied by XLam:
- 7.2.1. that timber goods may exhibit variations in shade, texture and finish due to being a natural material;
- 7.2.2. that timber is a hygroscopic material which is subject to natural expansion and contraction; and
- 7.2.3. that exposure of timber goods to weather conditions may cause the timber goods to distort in shape and/or size as a result.
- 8. Delivery and Risk**
-
- 8.1. The Products remain at XLam's risk until delivery to the Customer.
- 8.2. Delivery of the Products is deemed to be made:
- 8.2.1. when XLam gives possession of the Products directly to the Customer by delivery to the Customer's work site or premises or other nominated address (in which case unloading the Products is at the Customer's sole risk); or
- 8.2.2. by collection of the Products by the Customer or its agent from XLam's premises (in which case loading the Products is at the Customer's sole risk); or
- 8.2.3. when XLam gives possession of the Products to a carrier for the purposes of transmission to the Customer's work site or premises or other nominated address (in which case loading and unloading the Products is at the Customer's sole risk).
- 8.3. Unless otherwise agreed in writing, the Products will be collected by a carrier from XLam's premises or other nominated address for the purpose of transmission to the Customer's worksite or premises or other nominated address. Where XLam agrees to arrange for delivery of the Products to the Customer's premises or other nominated address, the carrier shall be the agent of the Customer and not XLam's agent. For the avoidance of doubt, XLam shall not be the Customer's agent for the arrangement of carriage or insurance. XLam agrees to use reasonable endeavours to procure that the Products are stacked and loaded for delivery to the Customer in accordance with any loading schedule agreed by XLam and the Customer, subject always to the carrier's authority, instructions and directions in respect of loading and unloading the Products which will prevail at all times.
- 8.4. On delivery, the Products are at the Customer's sole risk, and with effect from the time of delivery, the Customer will have in place adequate insurance with a reputable insurer to cover the Customer's interest as bailee of the Products and, where applicable, XLam's interest as owner of the Products under clause 9.1.
- 8.5. If required by the Customer or an employee or agent of the Customer to drive on to a property to make delivery, neither XLam nor any of its carriers accept liability for any damage that may result to either the property of any person or the Products other than to the extent caused by the breach or negligence of XLam.
- 8.6. If the Customer fails or refuses to take delivery of any Products or indicates that it will fail to do so, XLam may charge the Customer storage and transportation costs.
- 8.7. If any of the Products are damaged or destroyed following delivery but prior to title and ownership passing to the Customer in accordance with clause 9.1, XLam is entitled to receive all insurance proceeds payable for the Products, and the production of these XLam Terms by XLam is sufficient evidence of XLam's rights to receive the insurance proceeds without the need for any person dealing with XLam to make further enquiries. To the extent that any insurance proceeds received by XLam exceed the balance of the Price outstanding, XLam shall refund such excess to the Customer.
- 9. Retention of Title**
-
- 9.1. XLam shall retain title to and ownership of the Products (and the Customer is bailee only in respect of the Products) until the Customer has made payment in full for the Products and all other amounts due and payable to XLam on any account whatsoever and the Customer has performed all of its other obligations for the time being under the Contract. Until property in the Products has passed to the Customer, the Customer will store and maintain the Products in good condition and ensure the Products are identified in such a way that they are clearly the property of XLam.
- 9.2. Until title to and ownership of the Products has passed to the Customer, the Customer may not sell, dispose of or charge the Products and must hold or deal with the Products for and on behalf of XLam. If the Products are sold or disposed of by the Customer prior to property in the Products passing to the Customer, the Customer will be deemed to have done so as agent for XLam and the proceeds of such sale will be the property of XLam and held by the Customer on trust for and behalf of XLam.
- 9.3. If, prior to title to and ownership of the Products passing to the Customer, the Products have been fixed, attached or incorporated into any other materials or property by way of any manufacturing, construction or assembly process by the Customer or any third party, title to the Products shall remain with XLam.
- 9.4. Prior to title to and ownership of the Products passing to the Customer, the Customer gives XLam or XLam's agents irrevocable authority to enter any premises or property where the Products may be situated at any reasonable time to view and inspect the Products, and if the Products have not been paid for in full by the Customer, to uplift and retake possession of the Products. The Customer will indemnify XLam on demand for any costs, expenses, damages, losses or liability incurred by XLam or otherwise arising as a result of XLam exercising its rights under this clause.
- 10. Personal Property Securities Act 2009 ("PPSA")**
-
- 10.1. In this clause words and phrases that have defined meanings in the Australian *Personal Property Securities Act 2009* (Cth) (PPSA) have the same meaning as in the PPSA unless the context indicates otherwise.
- 10.2. The customer consents to XLam perfecting any security interest that it considers these Terms provide for by registration under the PPSA. The

Customer agrees to do anything XLam reasonably asks to ensure that the security interest:

- 10.2.1. is enforceable, perfected and otherwise effective; and
- 10.2.2. has priority over all other security interests.
- 10.3. The Customer shall not grant any other security interest or any lien over Products that XLam has a security interest in.
- 10.4. To the extent the law permits, the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent XLam from giving a notice under the PPSA.
- 10.5. The Customer agrees not to exercise its rights to make any request of XLam under section 275 of the PPSA.
- 10.6. To the extent the law permits, XLam need not comply with, and the Customer may not exercise rights under, any provisions of chapter 4 of the PPSA that may be contracted out of.
- 10.7. If XLam exercises a right, power or remedy in connection with these Terms or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless XLam states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
- 10.8. Neither XLam nor the Customer will disclose any information of the kind mentioned in section 275(1) of the PPSA under section 275(4) of the PPSA unless section 275(7) of the PPSA applies.

11. Express Warranties

- 11.1. Unless otherwise specified in the Quotation, XLam warrants the Products manufactured by XLam ("**Warranted Products**") against faulty materials or workmanship for a period of 12 months from the date of delivery of the Products to the Customer ("**Warranty**").
- 11.2. The Customer shall inspect the Warranted Products as soon as is reasonably practicable following delivery of the Warranted Products.
- 11.3. Any claim by the Customer that the Warranted Products do not conform with the Warranty (or such warranty as otherwise specified in the Quotation) shall be made promptly upon discovery of the alleged fault and, in any event, within the Warranty period specified in clause 11.1 (or such warranty period as otherwise specified in the Quotation). No warranty claim by the Customer will be considered or allowed unless it is made in accordance with this clause 11.3.
- 11.4. On receipt of a warranty claim from the Customer in accordance with clause 11.3, the Customer shall give XLam a reasonable opportunity to inspect any Warranted Products the Customer considers to be faulty.
- 11.5. If a Warranted Product is faulty, then following receipt of a warranty claim from the Customer in accordance with clause 11.3, XLam may, at its sole discretion, elect to:
 - 11.6. repair or replace the Warranted Product; or
 - 11.7. refund the price of the Warranted Product to the Customer.
- 11.8. Any express warranty given by XLam to the Customer in writing which applies to a Product, applies only where the Product has been used in accordance with accepted building practices and any other written instructions or guidelines provided by XLam before or at the time of delivery, including without limitation the instructions set out at clause 11.9.
- 11.9. No express warranty given by XLam to the Customer in writing will apply to any Product that is not used or stored in an appropriate manner. In particular, the Customer acknowledges that:
 - 11.9.1. the Product must not be dropped at any time or loaded to more than 70% of its design load prior to the adhesive reaching full cure and strength;
 - 11.9.2. the Product must be stored at least 300mm above ground;
 - 11.9.3. wrappings to protect the Product from moisture or direct sunlight during storage shall be kept in place until the last practicable opportunity before the Product is incorporated in a structure providing adequate weather protection, and wrappings opened or removed for inspection on delivery shall be re-secured immediately;
 - 11.9.4. where Products are supplied with a temporary protection sealer the Customer shall ensure that exposure to weather does not exceed the limits imposed by the specifications of the sealer;
 - 11.9.5. where Products which have been treated with a timber preservative as part of the manufacturing specification are cut, drilled or checked on site the freshly cut timber must immediately be re-treated with a preservative appropriate to the hazard class followed by re-coating with a temporary protection sealer if appropriate in the circumstances.

12. Exclusion of Warranties

- 12.1. To the extent permitted by law:
 - 12.1.1. except as expressly provided for in this Contract and subject to any express warranties given by XLam to the Customer in writing which apply to the Products and/or Services:
 - 12.1.1.1. XLam excludes all guarantees, warranties, representations, conditions or obligations (whether imposed or implied by statute or under common law, equity or otherwise);
 - 12.1.1.2. without limiting clause 12.1.1.1:

- 12.1.1.2.1. no warranty is given by XLam in relation to any components, materials or ancillary Products manufactured by a third party that are purchased by the Customer from XLam and any third party manufacturer's warranty given in respect of such goods shall be the Customer's sole warranty for those goods.
- 12.1.1.2.2. XLam makes no representation, and gives no guarantee or warranty whatsoever as to the suitability or fitness of its Products for the particular use intended by the Customer.
- 12.1.1.2.3. it is the responsibility of the Customer to satisfy itself as to the specifications, suitability and fitness of the Products for its purposes and the Customer accepts the Products on this basis.
- 12.1.1.3. The customer warrants and acknowledges to XLam that the Customer is not entering into this Contract in reliance on, and they may not rely on, any warranty, representation or other statement made or purporting to be made by or on behalf of XLam.
- 12.1.1.4. Unless expressly agreed otherwise in writing by XLam:
 - 12.1.1.4.1. the Services are for the sole use and benefit of the Customer; and
 - 12.1.1.4.2. XLam does not accept any liability, whether directly or indirectly, for any liability or loss suffered or incurred by any third party placing any reliance on the performance of the Services or any documents, materials or advice arising from or in connection with the Services.
 - 12.1.1.4.3. The Customer indemnifies XLam from any claim by, or liability to, a third party regarding third party use of, or reliance on, the Services.

13. Liability

- 13.1. If XLam is liable to the Customer in connection with any goods or services provided under a Contract (whether in contract, tort, or otherwise), subject to clauses 13.2 and 13.3, XLam's liability shall be limited to reasonably foreseeable damages, losses or expenses. XLam shall not be liable to the Customer for any indirect, consequential or special loss, or loss of profit, however arising.
- 13.2. Without limiting clause 13.1, the maximum aggregate liability of XLam for any claims made by the Customer (whether in contract, tort or otherwise), shall be limited to the lesser of:
 - 13.2.1. the amount of the Price of the goods and services concerned;
 - 13.2.2. the actual loss or damage suffered by the Customer; or
 - 13.2.3. \$50,000.
- 13.3. Without limiting clauses 13.1 and 13.2, if XLam is found liable to the Customer (whether in contract, tort or otherwise), and the Customer and/or a third party has contributed to the loss or damage, XLam's liability shall not exceed the proportional extent of its own contribution.

14. Insurance

- 14.1. XLam shall, in addition to any other insurances XLam agrees to take out in the Quotation, take out and maintain the following insurance with a reputable insurer for the duration of the Contract:
 - 14.1.1. public liability insurance of at least \$3,000,000; and
 - 14.1.2. professional indemnity insurance of at least \$3,000,000.
- 14.2. Where XLam is providing Services on the Customer's work site, then unless otherwise stated in the Quotation, the Customer shall take out and maintain contract works insurance, and XLam is not required to have its own contract works insurance in place. The Customer's contract works insurance shall cover all Services performed by XLam or its employees, subcontractors or agents and any of its materials and temporary works on the Customer's work site, and XLam must be an insured party under such insurance. On request in writing by XLam, the Customer shall immediately provide evidence of the existence and currency of the Customer's contract works insurance to XLam.

15. Time

- 15.1. XLam shall use reasonable endeavours to deliver the Products and complete the Services in accordance with the Delivery Schedule in the Quotation subject to the occurrence of any force majeure event, delay in the supply of wood to XLam by its suppliers, breakdown of machinery and/or industrial action which results in a delay in the delivery of the Products or performance of the Services. In the event of any such delay, the affected aspects of the Delivery Schedule as set out in the Quotation shall be extended by a period equal to the period of delay (and the remainder of the Delivery Schedule will be modified to the extent required in order to take account of such delay).

- 15.2. To the extent any delay (including delay to any Services or to the manufacture or delivery of any Products but excluding any delay within XLam's reasonable control) causes XLam to incur additional costs, the Customer shall be liable for any additional costs incurred by XLam arising out of that delay.
- 15.3. To the extent the Customer causes any delay, including delay to any Services or to the manufacture or delivery of any Products, the Customer shall be liable for any additional costs incurred by XLam arising out of that delay.
- 16. Default and Termination**
-
- 16.1. Either party to a Contract will be in default if:
- 16.1.1. following fourteen (14) days notice in writing from the other party, it fails to remedy a substantial breach of its obligations under the Contract;
- 16.1.2. it becomes insolvent, is wound up, has a receiver appointed in respect of all or some of its assets, enters into any composition or makes or is likely to make an arrangement with its creditors, does any act which would render it liable to be placed in liquidation or have a receiver appointed over its property, commits an act of bankruptcy, ceases to be of full legal capacity, or dies; or
- 16.1.3. any Products that XLam has retained title to are at risk and that party is responsible for the safety and security of those Products; or
- 16.1.4. it ceases carrying on business or threatens to cease carrying on business.
- 16.2. If a party is in default under clause 16.1, the other party may (subject to anything to the contrary in the Quotation) terminate the Contract by giving notice in writing.
- 16.3. Termination will not affect any of XLam's rights and remedies that have arisen prior to termination and all amounts owing by the Customer to XLam will become immediately due and payable on termination.
- 16.4. If the Customer fails to pay any amount due under the Contract by the due date for payment, XLam may suspend delivery of the Products to the Customer and/or performance of the Services until the matter is resolved to XLam's reasonable satisfaction, and XLam shall not be liable to the Customer for any delays, losses or damages caused by the period of the suspension.
- 16.5. Any costs, expenses, disbursements and legal costs incurred by XLam in the enforcement or attempted enforcement of any rights contained in this Contract shall be paid by the Customer, including any solicitor's fees (on a solicitor and own client basis) or debt collection fees.
- 17. Privacy of Information**
-
- 17.1. The Customer consents to:
- 17.1.1. the collection, retention and use of information and Personal Information (as defined in the Privacy Act 1988 (Cth) ("Privacy Act")) about the Customer by XLam from the Customer and any person for any purpose connected with its business and this Contract, for purposes including, but not limited to, assessing the financial standing and creditworthiness of the Customer and direct marketing; and
- 17.1.2. disclosure of any information or Personal Information about the Customer to any person who guarantees or provides any insurance or other credit support in relation to the Customer's obligations to XLam under this Contract and to such persons as may be necessary or desirable to enable XLam to exercise any power or enforce or attempt to enforce any of XLam's rights, remedies and powers under this Contract.
- 17.2. XLam and the Customer agree to comply with the Privacy Act and the Australian Privacy Principles (Schedule 1 to the Privacy Act).
- 17.3. The Customer consents that sub clause 8.1 of the Australian Privacy Principles does not apply to the disclosure of the Customer's Personal Information by XLam to any recipient located outside of Australia ("**Overseas Recipient**") such that if any Overseas Recipient handles the Customer's Personal Information in breach of the Australian Privacy Principles, XLam will not be accountable under the Privacy Act and the Customer will not be able to seek redress under the Privacy Act.
- 17.4. The Customer warrants that it has obtained the requisite consents from all relevant individuals whose Personal Information the Customer provides to XLam for the purposes of clause 17, including for disclosure of the individual's Personal Information by XLam to any Overseas Recipient in circumstances where sub clause 8.1 of the Australian Privacy Principles would not apply to such disclosure.
- 18. Variation**
-
- 18.1. The Customer may request a variation to the Products and/or Services under a Contract whether by way of an alteration, addition or omission by providing XLam with a written notice detailing the requested variation.
- 18.2. XLam may notify the Customer that any direction or circumstance should be treated as a variation to the Products or Services under a Contract whether by way of an alteration, addition or omission by providing the Customer with a written notice detailing the required variation.
- 18.3. Within seven (7) days (or such longer period as agreed by the parties) after the date of a variation notice given under clause 18.1 or 18.2, as applicable, XLam shall provide to the Customer a written submission ("Variation Quotation") which sets out:
- 18.3.1. the requested variation;
- 18.3.2. any impact that the variation would have on the other Products and/or Services being provided under the Contract;
- 18.3.3. any impact that the variation would have on the Delivery Schedule for supplying the Products or performing the Services as set out in the Quotation;
- 18.3.4. the effect that the variation would have on the Price of the Products and/or Services as set out in the Quotation; and
- 18.3.5. any other relevant effect XLam reasonably foresees that the variation may have.
- 18.4. XLam may charge, and the Customer agrees to pay to XLam in accordance with clause 4, the actual costs incurred by XLam in connection with preparing and processing a Variation Quotation in accordance with clause 18.3.
- 18.5. All variations shall be valued in accordance with XLam's reasonable rates and prices at the time or, in relation to any components, materials or ancillary Products manufactured by a third party, the actual cost. XLam shall also be entitled to add 15% for overheads and 8% for profit (or such other percentages as may be specified in the Quotation).
- 18.6. The Customer may, by notice in writing to XLam, accept or reject the Variation Quotation within seven (7) days after its receipt by the Customer. If a Variation Quotation is neither accepted nor rejected by the Customer in accordance with this clause, the Variation Quotation will be deemed to be rejected and the Variation Quotation withdrawn.
- 18.7. If the Customer accepts a Variation Quotation under clause 18.6, the Variation Quotation will be binding on the parties and the Contract will be varied in accordance with the Variation Quotation. For the avoidance of doubt, XLam will not commence any work in respect of a Variation Quotation until such time that it has been accepted under clause 18.6.
- 18.8. In the event that the parties are unable to agree on the Variation Quotation, the matter shall be treated as a dispute and resolved in accordance with clause 21.
- 19. Intellectual Property**
-
- 19.1. Nothing in these XLam Terms or any Contract shall be construed as granting the Customer any intellectual property rights in the Products.
- 19.2. The purchase of the Products by the Customer shall not, unless expressly agreed otherwise in writing by XLam, give the Customer any right to use, sell, modify, copy (whether by electronic means or otherwise), disclose or otherwise disseminate any trademark, design, copyright or any other intellectual property to any third party and for any purpose other than in relation to the Contract to which such intellectual property relates.
- 19.3. Intellectual property rights in any drawings, reports, specifications, bills of quantity, calculations and other documents provided, or created by XLam in connection with the Products or with the performance of any Services remain the property of XLam.
- 19.4. Subject to each party complying with its obligations under the Contract, each party provides to the other a royalty-free, non-exclusive, non-transferable licence to use intellectual property either belonging to that party or able to be provided by it whether under sub-licence or otherwise, for the sole purpose of performing the Services.
- 20. Confidentiality**
-
- 20.1. The Customer must keep strictly confidential the terms of this Contract and all information provided or otherwise made available by XLam to the Customer, including information relating to the Products, XLam's pricing details, market strategy and marketing plans and development of new products by XLam, except to the extent that use or disclosure to its employees and agents may be necessary to perform the Contract, or to the extent that such information is in the public domain otherwise than as a result of a breach by a party of the provisions of this clause, or as otherwise required by law.
- 21. Dispute Resolution**
-
- 21.1. If either party has any dispute with the other in connection with the Contract it must be notified in writing by the party to the other party.
- 21.2. Not later than seven (7) days of service of a notice, senior representatives from each party with authority to settle the dispute must meet and use best endeavours to resolve the dispute.
- 21.3. If the dispute is not resolved within seven (7) days (or other period agreed between the parties), either party may by written notice refer the dispute to a mediator. The mediator will be appointed by both parties or, if the parties fail to agree on such appointment, the mediator will be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- 21.4. If the dispute is not resolved by mediation, either party may commence legal proceedings or such alternative dispute resolution proceedings as agreed in writing by the parties. A party cannot commence legal proceedings unless it has issued a notice under this

clause 21 and the requirements of this clause have been complied with.

- 21.5 Clause 21 does not prevent a party from instituting proceedings in a competent court of law to seek injunctive or urgent declaratory relief or XLam instituting proceedings at any time to recover money owing by the Customer.

22. Force Majeure

- 22.1 XLam shall not be liable for any failure or delay in the delivery of the Products or performance of the Services or any other obligation under the Contract caused by any event beyond XLam's reasonable control ("**Force Majeure Event**"). In the event of any such delay, the affected aspects of the Delivery Schedule as set out in the Quotation shall be extended by a period equal to the period of delay (and the remainder of the Delivery Schedule will be modified to the extent required in order to take account of such delay).

23. Miscellaneous

- 23.1 This Contract is governed by the laws of the jurisdiction specified in the Quotation.
- 23.2 Headings are inserted for convenience and do not affect the construction of these XLam Terms. "Including" and similar words do not apply any limitation when used in the Contract.
- 23.3 In these XLam Terms the singular includes the plural and vice versa. Words importing one gender include the other. A person includes a firm, partnership, joint venture, association, corporation or other corporate body.
- 23.4 If a party consists of more than one person this Contract binds them jointly and each of them severally.
- 23.5 Any notice given by one party to the other shall be deemed to have been delivered 48 hours after posting to the recipient's registered office or last known address and immediately if forwarded by facsimile or email.
- 23.6 If these XLam Terms or part of them is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the XLam Terms enforceable.
- 23.7 Failure by XLam to insist upon strict performance by the Customer of any of the XLam Terms shall not be a waiver of any rights of XLam on any subsequent occasion.
- 23.8 The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person whatsoever.

24. Definitions

- 24.0. In this Contract, the following capitalised terms have the meaning given to them below:
- 24.0.1. Business Day means:
- 24.0.1.1. for the purposes of clause 4 of the Contract, where the relevant SOP Act (if any) defines a business day, a day defined as a business day in that SOP Act; or
- 24.0.1.2. for the purposes of:
- 24.0.1.2.1. clause 4 of the Contract, where there is no relevant SOP Act or the relevant SOP Act does not define a business day; or
- 24.0.1.2.2. the provisions of the Contract other than clause 4,
- business day means a day that is not:
- 24.0.1.2.3. a Saturday or a Sunday;
- 24.0.1.2.4. 27, 28, 29, 30 or 31 December; or
- 24.0.1.2.5. a day that is wholly or partly observed in the jurisdiction of the State or Territory applicable to the Works, as a public or statutory holiday.
- 24.0.2. PPSA means the Personal Property Securities Act 2009 (Cth).
- 24.0.3. SOP Act means any of the following to the extent that they apply to a payment claims made in connection with work under this Contract:
- 24.0.3.1. the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- 24.0.3.2. the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- 24.0.3.3. the *Building and Construction Industry Security of Payment Act 2002* (VIC);
- 24.0.3.4. the *Building and Construction Industry Payments Act 2004* (QLD);
- 24.0.3.5. the *Building and Construction Industry Security of Payment Act 2009* (SA) and the *Worker's Liens Act* (SA);
- 24.0.3.6. the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- 24.0.3.7. the *Construction Contracts (Security of Payments) Act* (NT); and