

MINC Services' General Terms & Conditions

MINC Services' General Terms and Conditions form part of the contract agreement should our quote be successful.

CONFIRMATION: Should our quotation be successful, we would require written confirmation forwarded to us prior to work commencement.

Notwithstanding any other document, representation or agreement to the contrary, the work to be carried out by MINC Services will be on the following basis:

COLOUR SCHEMES: To be forwarded 14 days prior to work commencement.

DEPOSIT: 30% deposit is required with work order prior to commencement of works.

VALIDITY OF QUOTATION: 45 Days.

TERMS OF PAYMENT:

- (a) Invoices will be issued every seven - (7) days for work completed unless otherwise agreed to prior to commencement or as may be designated by the specified contract document.
- (b) Terms of payment are strictly Nett seven (7) days from date on invoice.
- (c) All invoices are to be paid in full and no amount is to be deducted by way of set-off or counter claim without written consent of MINC Services. FINAL invoice will be submitted on completion of work and will be due and payable with 7 days on date of invoice.
- (d) All material remains the property of "MINC Services Australia Pty Ltd" until the final account is paid in full at the completion of the work on site.

LATE PAYMENTS: Any payment not made by the due date, shall attract overdue fee of \$110.00, plus interest at the "fair trading" rate of 0.08219% per day from the due date until paid.

Should we engage legal representation, a collection agency or an application to the small claims court to recover outstanding monies a \$110.00 administration fee plus interest at the currently applicable "fair trading" rate from the due date shall be applied, plus any additional recovery costs that we incur, inclusive and without prejudice to any other rights, which MINC Services shall have under contract or commercial law.

COMPANY'S PROPERTY: All maintenance material, manuals and control systems circuit diagrams remain the property of MINC Services and are confidential, and may be removed only by MINC Services.

All materials and equipment remain the property of MINC Services until paid in full where an invoice has been issued.

LIMITATION OF LIABILITY:

Our liability for death, injury or loss to any person and loss or damage to property of any person pursuant to these Terms and Conditions (including without limitation its specific service and maintenance provisions and special conditions, if any) any duty we have in tort, or any other rule of law is limited to death, injury, loss or damage which in any such case is, and only to the extent that it is, the direct and foreseeable result of our negligence by act, omission or default for which we are responsible, except that these limitations do not extend to liability which may not lawfully be so limited whether by reason of Statute or the public policy of the law.

We shall not, in respect of these Terms and Conditions, be liable for indirect, consequential or economic damages (including without limitation loss of revenues, profits, actual and potential business opportunities) or for failure to perform any obligation under these Terms and Conditions to the extent that such performance is prevented by circumstances beyond our control.

Where an Act of parliament implies in this Agreement any term, condition or warranty and that act avoids or provisions in a contract excluding or modifying the application or exercise of or liability under such term, condition or warranty then the term, condition or warranty will be deemed to be included in this contract but our liability for breach of that term, condition or warranty is limited at our option to any one or more of:

- 1. If the breach relates to goods:
 - (a) Replacement of the goods or supply of equivalent goods
 - (b) Repair of goods
 - (c) Payment of the cost of replacing the goods or of acquiring equivalent goods
 - (d) Payment of the cost of having the goods repaired; and



2. If the breach relates to services:
 - (a) Supply the services again; or
 - (b) Payment of the cost of having the services supplied again.

LIABILITY: MINC Services shall not be liable for:

- (a) **(i) LIQUIDATED DAMAGES:**
- (ii) LATENT DAMAGE:**
- (iii) CONSEQUENTIAL LOSS:**

WORKS & CONTRACT SUM:

- (a) The Contractor must carry out the Works in an appropriate and skilful way, with reasonable care and in accordance with the terms and conditions of the contract.
- (b) The goods shall be new, unless otherwise stated, consistent with the description given, of merchantable quality and reasonably fit for the purpose for which they are provided.
- (c) The owner must pay the Contract Sum to the Contractor in the manner and at the times stated in the Contract.

WARRANTIES:

- (a) Warranties will not be issued until all payments have been received.
- (b) MINC Services will provide upon request the following types of warranties.
 - Warranty on materials from the relevant manufacturer where reasonably obtainable and on the terms offered by the manufacturer.
 - Warranty on labour.

COMPLIANCE WITH STATUTES: The Contractor must comply with all statutory and legal requirements and obtain all necessary approvals and permits unless otherwise agreed.

SPECIAL CONDITIONS: Any special conditions contained in any of the Schedules hereto shall form part of this agreement.

SERVICES: As required and only if necessary. Storage facilities, (i.e. garage area), Water, Electricity, Rubbish removal and Ablution facilities to be provided at no charge to our Company. Should ablution facilities not be available on site the cost to hire a portable toilet will be added to the invoice. If no electricity is available on site the cost of hiring a generator will be added to the final invoice. All rubbish placed in Unit rubbish containers will be bagged in plastic bags. Should this not be acceptable or the amount of rubbish greater than can be contained in Unit rubbish containers, a small mini-skip will be hired and the cost added to the final invoice.

COMMENCEMENT: The Owner must give the Contractor possession of the Site by the Commencement Date.

- (a) The Contractor warrants the subject Works will be carried out with reasonable diligence.

PROPERTY ACCESS: The client shall provide clear uninterrupted and safe access to the property for our employees, sub-contractors, agents, machinery and materials.

CLEAR ACCESS to the work area would be required at all times, Pot plants etc. to be removed by owners.

SITE CONDITIONS:

- (a) The Owner warrants to give the Contractor possession of the Site under Clause **Commencement** (a) free of Latent Conditions such as the Works may be commenced without hindrance or delay.
- (b) On becoming aware of the existence of a Latent Condition the Contractor must, as soon as is practicable, give the Owner a written notice containing the particulars of the Latent Condition and including an estimate of the cost required to overcome the Latent Condition.
- (c) On giving the Owner a written notice under Clause **Site Conditions** (b):
 - (1) the Works are deemed to have been varied to include the work required to overcome the Latent Condition; and
 - (2) unless otherwise stated in this Contract, the cost to the Contractor of the work completed under Clause **Site Conditions**(c)(i), together with the Contractor's Margin applied to that cost, is deemed to be an additional part of the Contract Sum which shall be added to the existing Contract Sum and included by the Contractor in the next Progress Claim.
- (d) The Owner warrants to ensure the survey pegs are correctly located and clearly marked prior to Commencement Date.
- (e) The Owner shall ensure that the locations of underground services in the vicinity of the works are marked clearly and in such a way that a reasonable person would be aware of their existence.



- (f) The Owner warrants to indemnify the Contractor against any damage caused to unmarked underground services during the Works whether such damage is caused by the Contractor or not.

EXCAVATIONS CONCRETE CUTTING/DRILLING: Whilst all care will be taken, damage to any services during any excavation or concrete cutting/drilling is not quoted and any repairs will be at the cost of the client unless plans showing the services have been supplied prior to the commencement of these works.

UNFORESEEN/UNANTICIPATED WORKS: Whilst all care was taken when quoting, any unforeseen work not visible or unanticipated will be at the cost of the client.

DESIGN: MINC Services will not be responsible for any defective work or materials where the work or materials have been carried out or provided in accordance with the design, specification or instruction provided by or on behalf of the Principal.

SITE CONDITION and SITE SAFETY: MINC Services will not be responsible for any site conditions or conditions affecting the site not reasonably discoverable by MINC Services prior to the commencement of the works.

NOISE: MINC Services will use its best endeavour to minimise noise, dust and vibrations from the carrying out of the works and will ensure that any applicable Australian Standards relating to these matters are complied with.

ADDITIONAL WORK: If any additional or unforeseen work at time of quoting is required we will notify you and have the value and scope agreed prior to any such work-taking place.

RATES: Where we nominated a dollar or supply rate for purchases and this rate is varied an adjustment to the final price will be made.

KEYS:

- (a) Our quotation is based on the building owner organising & supplying access keys.
- (b) MINC Services will not request master keys and as such will not be responsible for loss of master keys.
- (c) Any keys supplied to and lost, MINC Services liability will only be to replace the lost keys at our cost.

NOTICES: Any notice or other communication under this contract shall be in writing addressed to the address of the parties shown in this contract or to such other address as any party may notify in writing to the other parties and will be deemed to be duly received by or served to the addressee if in person, when delivered; if by post; seven days from the date of postage; if by facsimile transmission, on dispatch of the transmission.

DISPUTE RESOLUTION: If a dispute arises out of or in connection with this Contract the party raising the dispute must give the other party a written notice of the dispute clearly and adequately identifying the particulars of the dispute. Subject to this Contract the parties must continue to perform their obligations under the Contract notwithstanding the existence of any dispute.

A building owner may refer a dispute in connection with the contract to the relevant Building Services Authority for conciliation at any time.

If conciliation under the relevant Building Services Authority dispute resolution service is unsuccessful the dispute may be referred to the Commercial and Consumer Tribunal.

MISCELLANEOUS:

- (a) No waiver by MINC of any default or breach or the non-acceptance by MINC of any repudiation of this Contract by the Customer shall affect the rights of MINC in respect of any further or continuing default or breach or any subsequent repudiation by the Customer.
- (b) This Agreement shall be binding on the heirs, successors and permitted assigns of the party; hereto.
- (c) In the event that any provision (or part thereof) contained in this Agreement is rendered void, Invalid or unenforceable in any Jurisdiction. Then such provision (or part thereof) shall be severed from this Agreement without affecting the validity of the provision in any other Jurisdiction or the remaining provisions in that Jurisdiction.
- (d) Where there is more than one Customer, then the liability of each shall be joint and several.
- (e) In this Agreement:
 - (i) The singular includes the plural and vice versa;
 - (ii) Any gender includes any other gender
 - (iii) Reference to person includes a corporation or any other legal entity and vice versa.
- (f) No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party.
- (g) This agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and contains all of the representations, undertakings, warranties, covenants and agreements of the parties.



- (h) This Agreement shall be governed by and construed in accordance with the laws of the state.
- (i) Any agreed amendment to the Schedules to this Agreement must be in writing.

RUST CORROSION: In an aggressive salt laden environment, we cannot warrant the rust will not reappear; no warranty is offered or given.

WATER INGRESS: We wish to advise that with all Water Ingress problems there is no guarantee that there is only one point of entry. This Agreement is based on our best evaluation at the time of inspection with the information supplied. However, a process of elimination may be required and additional works may be necessary. Further investigation to determine the next phase of the elimination process can be performed at an additional cost.

LICENCING AUTHORITY: Fully Licenced - details available on request

PUBLIC & PRODUCT LIABILITY: Details available on request

PROFESSIONAL INDEMNITY: Details available on request

WORKCOVER: Details available on request

INDUSTRY ASSOCIATION MEMBERSHIPS: Details on our website: www.minc.com.au