

Belington Pty. Ltd. trading as Old Red Brick Co. ABN 41 354 683 830 (ORB)

## Standard terms and conditions of trade for residential demolition

### 1. Acceptance

- 1.1. Any instructions received by ORB from the Client (as described on any quotation, work authorisation or other form as provided by ORB to the Client, and includes any person acting on behalf of and with the authority of the Client) for the supply of Works (all works undertaken by ORB for the Client and includes any advice or recommendations) or the Client's acceptance of Works supplied by ORB shall constitute acceptance of the terms and conditions contained herein.
- 1.2. Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of ORB.
- 1.3. The Client shall give ORB not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name or any other change in the Client's details. The Client shall be liable for any loss incurred by ORB as a result of the Client's failure to comply with this clause.
- 1.4. Works are supplied by ORB only on the terms and conditions of trade herein to the exclusion of anything to the contrary in terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### 2. Payment

- 2.1. At ORB's sole discretion the payment price for the Works shall be either:
  - 2.1.1. As indicated on invoices provided by ORB to the Client in respect of Works undertaken by ORB; or
  - 2.1.2. ORB's quoted price (subject to clause 2.2) which shall be binding upon ORB provided that the Client shall accept ORB's quotation in writing within thirty (30) days.
- 2.2. ORB reserves the right to alter the payment price in the event of a variation to ORB's quotation. Any variation from the plan of scheduled Works or specifications will be charged for on the basis of ORB's quotation and will be shown as variations on the invoice. ORB shall not proceed with any variations without first obtaining the Client's authorisation. Payment for all variations must be made in accordance with the payment terms specified on ORB's invoice.
- 2.3. At ORB's sole discretion:
  - 2.3.1. Payment for approved Clients shall be made by instalments in accordance with ORB's payment schedule; or
  - 2.3.2. Payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 2.4. Time for payment for the Works shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due on completion of the Works.
- 2.5. GST and other taxes and duties that may be applicable shall be added to the payment price except when they are expressly included in the payment price.
- 2.6. Receipt by ORB 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 and until then ORB's ownership or rights in respect of the Works shall continue.

### 3. Delivery

- 3.1. At ORB's sole discretion delivery of the Works shall take place when the Client takes possession of the Works at the Client's nominated address.
- 3.2. The Client shall make all arrangements necessary to take delivery of the Works whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Works

as arranged then ORB shall be entitled to charge a reasonable fee for a cancelled delivery or redelivery.

- 3.3. ORB may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 3.4. The failure of ORB to deliver shall not entitle either party to treat this contract as repudiated.
- 3.5. ORB shall not be liable for any loss or damage whatsoever due to failure by ORB to deliver the Works (or any of them) promptly or at all where due to circumstances beyond the control of ORB.

#### **4. Risk**

- 4.1. If any of the surrounding areas, structures, items or services that are to remain unharmed are damaged or destroyed prior to completion of the Works, ORB is entitled to receive all insurance proceeds payable. This shall apply whether or not the payment price has become payable under this agreement. The production of these terms and conditions by ORB is sufficient evidence of ORB's rights to receive the insurance proceeds without the need for any person dealing with ORB to make further enquiries.
- 4.2. The Client acknowledges that once the site is handed over to ORB that:
  - 4.2.1. They shall have no claim whatsoever to any materials remaining at the site unless specifically agreed in writing; and
  - 4.2.2. That unless such an agreement is in place ORB shall not be liable to compensate the Client for any materials left at the site.
- 4.3. Finishes, levels and contours of the site are limited to natural levels and are not to site plan or earth work specifications.
- 4.4. Whilst every care is taken to prevent any damage to the Client's property and the property of any third party/s, no liability is accepted for any damage that may occur whilst undertaking Works under the instruction of the Client or the Client's agent.
- 4.5. Whilst care is taken when trees and buildings are removed, no liability is accepted for any damage to fences, services or neighbouring properties.
- 4.6. ORB shall not be liable for any loss or damage caused in accessing the site beyond the reasonable control of ORB (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

#### **5. On Site Works**

- 5.1. Prior to ORB commencing any Works the Client must ensure that:
  - 5.1.1. ORB have been advised in writing of the precise location of all underground services on the site and the same have been clearly marked in high visibility spray paint. The underground mains and services the Client 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;
  - 5.1.2. The relevant council approval for the site Works has been granted;
  - 5.1.3. Any gas connections to the site have been cut off at the street and not simply disconnected at the gas meter;
  - 5.1.4. Any electricity connections to the site have been disconnected by SA Power Networks;
  - 5.1.5. Any water service to the site remains connected as ORB requires the use of water for dust and debris control while undertaking the Works;
  - 5.1.6. Any possessions, fittings or fixtures that are to be retained by the Client have been removed from the site;
  - 5.1.7. ORB have been notified in writing of any structure, item or tree that is to remain on site;
  - 5.1.8. Owners of adjoining properties have been given reasonable notice of the commencement of the Works and of the potential for increased noise, traffic and dust.

5.2. Whilst ORB will take all care to avoid damage to any underground services the Client agrees to indemnify ORB 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 5.1.1.

## **6. Asbestos/Hazardous Materials**

- 6.1. Prior to ORB commencing any Works, the Client must advise ORB of the precise location of all known asbestos/hazardous materials on the site and clearly mark the same. Removal from the site and the disposal of asbestos/hazardous materials shall at all times be the Client's responsibility unless otherwise agreed in writing.
- 6.2. In the event that ORB discovers asbestos/hazardous materials whilst undertaking any Works ORB shall immediately advise the Client of the same and shall be entitled to suspend the Works pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by ORB as a result of the discovery of asbestos/hazardous materials or any suspension of works in relation thereto.
- 6.3. Where ORB agrees to remove any asbestos/hazardous materials on the Client's behalf then the Client shall be liable for all costs incurred by ORB in the removal and disposal of those materials.
- 6.4. Both the Client and ORB agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to asbestos/hazardous materials and the safe removal and disposal of same.

## **7. Errors and Omissions**

- 7.1. The Client shall inspect the premises on completion and shall within forty eight (48) hours of completion notify ORB of any alleged defect, errors, omissions or failure to comply with the agreed Works to be undertaken or quote. The Client shall afford ORB an opportunity to inspect the Works within a reasonable time following delivery if the Client reasonably believes the Works are defective in any way. If the Client fails to comply with this provision, the Works shall be conclusively presumed to be in accordance with these terms and conditions and free from any defect or damage.
- 7.2. For defective Works, which ORB has agreed in writing that the Client is entitled to reject, ORB's liability is limited to (at ORB's discretion) rectifying the Works, except where the Client has acquired Works as a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1987* (SA), and is therefore also entitled to, at the consumer's discretion, either a refund of the agreed cost of the particular part of the Works, or rectification of the Works.
- 7.3. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1987* (SA) except to the extent permitted by those Acts where applicable.

## **8. Client's Disclaimer**

- 8.1. The Client hereby disclaims any right to rescind, or cancel the contract with ORB or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by ORB and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

## **9. Default and Consequences of Default**

- 9.1. 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 ORB's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

- 9.2. In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by ORB.
- 9.3. If the Client defaults in payment of any invoice when due, the Client shall indemnify ORB from and against all costs and disbursements incurred by ORB in pursuing the debt including legal costs on a solicitor and own client basis and ORB's collection agency costs.
- 9.4. Without prejudice to any other remedies ORB may have, if at any time the Client is in breach of any obligation (including those relating to payment), ORB may suspend or terminate the supply of Works to the Client and any of its other obligations under these terms and conditions. ORB will not be liable to the Client for any loss or damage the Client suffers because ORB has exercised its rights under this clause.
- 9.5. Without prejudice to ORB's other remedies at law ORB shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ORB shall, whether or not due for payment, become immediately payable in the event that:
  - 9.5.1. Any money payable to ORB becomes overdue, or in ORB's opinion the Client will be unable to meet its payments as they fall due; or
  - 9.5.2. The Client 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
  - 9.5.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **10. Cancellation**

- 10.1. ORB may cancel any contract to which these terms and conditions apply or cancel the supply of Works at any time before the Works are due to commence. On giving such notice ORB shall repay to the Client any sums paid in respect of the payment price. ORB shall not be liable for any loss or damage whatsoever arising from any cancellation.
- 10.2. In the event that the Client cancels delivery of the Works the Client shall be liable for any loss incurred by ORB (including but not limited to any loss of future earnings) up to the time of cancellation.

## **11. Privacy Act 1988 (Cth)**

- 11.1. The Client agrees for ORB to obtain personal credit information about the Client from a credit reporting body in relation to credit provided by ORB.
- 11.2. The Client agrees that ORB may exchange information about the Client with those credit providers either named as trade referees by the Client or named by a credit reporting body for the following purposes:
  - 11.2.1. To assess an application by the Client; or
  - 11.2.2. To notify other credit providers of a default by the Client; or
  - 11.2.3. To exchange information with other credit providers as to the status of the Client's credit account, where the Client is in default with other credit providers; or
  - 11.2.4. To assess the credit worthiness of the Client.
- 11.3. The Client consents to ORB being provided with credit information by a credit reporting body in order to collect overdue payment on commercial credit.
- 11.4. The Client agrees that personal credit information provided may be used and retained by ORB for the following purposes and for other purposes as shall be agreed between the Client and ORB or required by law from time to time:
  - 11.4.1. Provision of Works; or
  - 11.4.2. Marketing of Works by ORB, its agents or distributors in relation to the Works; or

- 11.4.3. Analysing, verifying or checking the Client's credit, payment or status in relation to provision of Works; or
  - 11.4.4. Processing of any payment instructions, direct debit facilities or credit facilities requested by the Client; or
  - 11.4.5. Enabling the daily operation of the Client's account or the collection of amounts outstanding in the Client's account in relation to the Works.
- 11.5. ORB may give information about the Client to a credit reporting body for the following purposes:
- 11.5.1. To obtain credit information about the Client; or
  - 11.5.2. To allow the credit reporting body to provide other credit providers with credit information to assess the Client's credit worthiness.

## **12. Building and Construction Industry Security of Payment Act 2009 (SA)**

- 12.1. At ORB's sole discretion, if there are any disputes or claims for unpaid goods or Works then the provisions of the *Building and Construction Industry Security of Payment Act 2009 (SA)* may apply.
- 12.2. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payment Act 2009 (SA)*, except to the extent permitted by the Act where applicable.

## **13. Miscellaneous**

- 13.1. If any provision of these terms and conditions is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2. These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts of South Australia.
- 13.3. ORB shall be under no liability whatsoever to the Client for any indirect or consequential loss or expense (including loss of profit) suffered by the Client arising out of a breach by ORB of these terms and conditions.
- 13.4. In the event of any breach of this contract by ORB the remedies of the Client shall be limited to damages which under no circumstances shall exceed the payment price of the Works.
- 13.5. The Client shall not be entitled to set off against, or deduct from the payment price, any sums owed or claimed to be owed to the Client by ORB nor to withhold payment of any invoice because part of that invoice is in dispute.
- 13.6. ORB may license or sub-contract all or any part of its rights or obligations without the Client's consent.
- 13.7. ORB reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which ORB notifies the Client of such change.
- 13.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood or storm or other event beyond the reasonable control of either party.
- 13.9. The failure by ORB to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ORB's right to subsequently enforce that provision.

## Standard terms and conditions of trade for sale of Old Red Bricks

1. **Purchase Price:** The purchase price of the goods is specified on this tax invoice. The Old Red Brick Company regularly reviews its prices and these prices may change over time.
2. **Terms of Payment:** All goods must be paid for prior to collection or delivery. The Old Red Brick Company does not run any accounts on goods. The Old Red Brick Company accepts the following payment methods: Cash, MasterCard, Visa and Direct Transfer.
3. **Nature of the Goods:** All goods that the Old Red Brick Company supplies and sells are recycled. Whilst we try to maintain and sell a consistent product, variation in the quality of all goods is to be expected. It is for this reason that we strongly recommend that all customers:
  - a. Sight all goods prior to placing an order.
  - b. Carefully select the product they wish to purchase.
4. **Refunds Policy:** All purchases are final. No refunds will be given once goods have been paid for and have left the company premises.
5. **Broken / Defective Bricks:** All pallets of bricks, no matter the type of brick purchased, will have a number of broken or defective bricks within them. We allow up to 5% or 20 bricks per pallet. Any pallet with greater than 5% defective bricks will be exchanged but not refunded.
6. **Phone / Email Order Policy:** No refunds will be given to customers that have ordered goods via phone or email.
7. **Repurchase Policy:** The Old Red Brick Company does not repurchase goods bought in excess by customers.
8. **Pallet Refund Policy:** No pallet refunds will be given without sight of the tax invoice provided by the Old Red Brick Company on purchase of goods.
9. **Pallet Return Policy:** The Old Red Brick Company does not pick up or collect pallets. The onus is on the customer to return the pallets to the Old Red Brick Company to collect any pallet refunds.
10. **Delivery:** Goods are organised and delivered through an independent contractor. The Old Red Brick Company cannot specify a time when goods are delivered. Delivery should be organised with the Old Red Brick Company well in advance to avoid delay to builders / contractors.

Acceptance of Terms of Trade: Acceptance of these terms of trade is automatic upon purchase of goods.