

Poulton Properties Pty Ltd T/A Perini Tiles – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Perini to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors, and permitted assigns.
- 1.2 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using Perini’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **“Goods”** means all Goods or Services supplied by Perini to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.6 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.7 **“Perini”** means Poulton Properties Pty Ltd T/A Perini Tiles, its successors and assigns or any person acting on behalf of and with the authority of Poulton Properties Pty Ltd T/A Perini Tiles.
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between Perini and the Client in accordance with clause 7 below.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with Perini and it has been approved with a credit limit established for the account. In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Perini reserves the right to refuse delivery; and
 - (b) images of the Goods displayed on Perini’s website and/or catalogue are a visual representation only, and may appear different due to batching, lighting and/or other external factors. A variation in colour, shade and grain are inherent in all kiln products and natural stone and as an image is indicative only, Perini recommends that the Client do their due diligence and arrange for a sample of the Goods to be ordered from Perini to confirm the tile selection prior to confirming the order for the Goods.
- 2.5 Any advice, recommendation, information or assistance provided by Perini in relation to the Goods or Services supplied is given in good faith to the Client, or the Client’s agent and is based on Perini’s own knowledge and experience and shall be accepted without liability on the part of Perini. Where such advice or recommendations are not acted upon then Perini shall require the Client or their agent to authorise commencement of the Services in writing. Perini shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Perini shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Perini in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Perini in respect of the Services.
- 3.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) (**“Client Error”**). The Client must pay for all Goods it orders from Perini notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. Perini is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

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

5. On-Line Ordering

- 5.1 The Client acknowledges and agrees that:
- (a) Perini does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Perini;
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such Perini cannot warrant against delays or errors in transmitting data between the Client and Perini including orders, and you agree that to the maximum extent permitted by law, Perini will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Perini and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences; and
 - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, Perini shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 Perini reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Perini's business, or violated these terms and conditions.

6. Credit Card Information

- 6.1 Perini will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by Perini;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 20) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, Perini is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

7. Price and Payment

- 7.1 At Perini's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Perini to the Client upon placement of an order for Goods; or
 - (b) Perini's estimated Price (subject to clause 7.2) which shall not be deemed binding upon Perini as the actual Price can only be determined upon completion of the Services. Perini undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate; or
 - (c) Perini's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Perini reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) 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, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, change of design, changes to the delivery address etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Perini in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Perini's control.
- 7.3 Variations will be charged for on the basis of Perini's quotation, and will be detailed in writing, and shown as variations on Perini's invoice. The Client shall be required to respond to any variation submitted by Perini within ten (10) working days. Failure to do so will entitle Perini to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At Perini's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by Perini or as notified to the Client prior to the placement of an order for Goods.
- 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Perini, which may be:
- (a) before delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Perini's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Perini.
- 7.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Perini.
- 7.7 Perini may in its discretion allocate any payment received from the Client towards any invoice that Perini determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Perini may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Perini, payment will be deemed to be allocated in such manner as preserves the maximum value of Perini's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Perini nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify Perini in writing within three (3) business days, the invoice shall remain due and payable for the full

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- amount, until such time as Perini investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Perini placing the Client's account into default and subject to default interest in accordance with clause 18.1.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Perini an amount equal to any GST Perini must pay for any supply by Perini under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 8. Provision of the Services**
- 8.1 Subject to clause 8.2 it is Perini's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Perini claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Perini's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Perini that the site is ready.
- 8.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Perini's address; or
 - (b) Perini (or Perini's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.4 The cost of Delivery will be payable by the Client in accordance with the quotation provided by Perini to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.
- 8.5 The Client acknowledges and accepts that in the event that the Goods are not collected by the Client within:
- (a) six (6) months of Perini advising the Client that the Goods are ready for collection that Perini reserves the right to charge the Client a holding/storage fee; or
 - (b) twelve (12) months of Perini advising the Client that the Goods are ready for collection that Perini reserves the right to discard the Goods upon Perini providing the Client written notice of such.
- 8.6 Perini 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.
- 8.7 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 8.8 Any time specified by Perini for Delivery of the Goods is an estimate only and Perini will not be liable for any loss or damage incurred by the Client because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If Perini is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Perini shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8.9 Further to clause 8.8, Delivery offered by Perini is a door to door service, the Client acknowledges and accepts that in the event that the Client requests Perini to deliver the Goods at an alternative address than originally provided at the time of quotation then this shall be at an additional cost unless otherwise agreed.
- 9. Accuracy of Client's Plans and Measurements**
- 9.1 Perini shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Perini 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 Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Perini places an order based on these measurements and quantities. Perini accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 10. Risk**
- 10.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Perini is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Perini is sufficient evidence of Perini's rights to receive the insurance proceeds without the need for any person dealing with Perini to make further enquiries.
- 10.3 Where Perini is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Perini shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 10.4 Where the Contract does not include installation of Goods by Perini, Perini shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 10.5 The Client acknowledges and accepts that:
- (a) Perini gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond Perini's control due to the nature of the Goods at the time of installation, therefore it is recommended that the Client allows for extra quantities for such breakages;
 - (b) it is the Client's responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or the Client figures by Perini are approximate only and no responsibility is taken for their accuracy;
 - (c) if the Client orders an insufficient number of tiles, then Perini will take no responsibility for any variation of colour in further batches supplied to the Client or the inability to supply Goods at all;
 - (d) variations of colour, shade and grain are inherent in all kiln fired products, natural stone and glass. While every effort will be taken by Perini to match colour, shade or grain of product, Perini shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied once the tiles have been

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fixed. Further, the Client acknowledges that all Goods are sold subject to their normal and natural colour variations and samples given or displayed are to be considered indicative only; and

- (e) optical hazing (which is a smoky, hazy, smudgy effect visible on the surface of the tile when a light source reflects at a certain angle across the surface of the tile) is an inherent characteristic of polished tiles, stemming mainly from the mineral content and manufacture of the tile. It is caused by light reflection, and bulk sunlight shining through large windows will increase the amount of haze visible. Subsequently, this will not allow the polished porcelain floor to have a mirror-like finish and such an expectation is unrealistic. Further, the Client acknowledges that this has no effect on the technical performance of the tile and therefore is not considered to be a defect. Optical hazing is primarily an aesthetic issue. Perini strongly advises the Client purchase tile samples to test in different locations, and under various lighting conditions, of the intended installation site, as Perini accept no liability in the event the Client is unhappy with their choice.

10.6 Perini shall not accept any liability for:

- (a) tiles with any obvious faults or marks once the tiles have been fixed; or
(b) damages to the Goods being due to inappropriate tile selection, maintenance or carelessness.

11. Site Access and Condition

- 11.1 Perini is not responsible for the removal of rubbish from or clean-up of the building/construction site/s. All rubbish generated by Perini will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 11.2 It is the intention of Perini and agreed by the Client that the Client shall ensure that Perini has clear and free access to the site at all times to enable them to undertake the Services (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Goods). Perini 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 Perini.
- 11.3 It is the Client's responsibility to provide Perini with access to a suitable power source and/or other amenities that may be required during the course of the Services.
- 11.4 The Client agrees to be present at the site when and as reasonably requested by Perini and its employees, contractors and/or agents.
- 11.5 Where Perini requires that Goods, tools etc. required for the Services be stored at the site, the Client shall supply Perini a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft, or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

12. Compliance with Laws

- 12.1 The Client and Perini shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services, any occupational health and safety (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

13. Title

- 13.1 Perini and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Perini all amounts owing to Perini; and
(b) the Client has met all of its other obligations to Perini.
- 13.2 Receipt by Perini 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.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Perini on request;
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for Perini and must pay to Perini the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
(c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Perini and must pay or deliver the proceeds to Perini on demand;
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Perini and must sell, dispose of or return the resulting product to Perini as it so directs;
(e) the Client irrevocably authorises Perini to enter any premises where Perini believes the Goods are kept and recover possession of the Goods;
(f) Perini may recover possession of any Goods in transit whether or not Delivery has occurred;
(g) the Client 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 Perini; and
(h) Perini may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Client 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 Perini to the Client, and the proceeds from such Goods.
- 14.3 The Client 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 Perini may reasonably require to;

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- (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 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Perini 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 Perini;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Perini;
 - (e) immediately advise Perini of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 14.4 Perini and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by Perini, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client must unconditionally ratify any actions taken by Perini under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of Perini agreeing to supply the Goods and/or provide its Services, the Client grants Perini a security interest by way of a floating charge (registerable by Perini pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit Perini to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 15.2 The Client indemnifies Perini from and against all Perini's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Perini's rights under this clause.
- 15.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 13.1, 14.2 and 15.1 as applicable, is deemed insufficient by Perini to secure the repayment of monies owed by the Client to Perini, the Client hereby grants Perini a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 16.1 The Client must inspect the Goods on Delivery and must within two (2) days of Delivery notify Perini in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Perini to inspect the Goods.
- 16.2 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**).
- 16.3 Perini acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Perini makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Perini's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, Perini's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If Perini is required to replace the Goods under this clause or the CCA, but is unable to do so, Perini may refund any money the Client has paid for the Goods.
- 16.7 If the Client is not a consumer within the meaning of the CCA, Perini'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 Client by Perini at Perini's sole discretion;
 - (b) limited to any warranty to which Perini is entitled, if Perini did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
 - (b) Perini has agreed that the Goods are defective; and
 - (c) the Goods are returned within fourteen (14) days from the date of invoice, at the Client'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.
- 16.9 Refunds may take up to ten (10) business days to process from the date that the Goods are received at Perini's warehouse.
- 16.10 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, Perini 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 Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client 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 Client failing to follow any instructions or guidelines provided by Perini;
 - (e) fair wear and tear, any accident, or act of God.

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- 16.11 The Client acknowledges and accepts that any “change of mind” will not be accepted and no refunds will be processed by Perini once the Client’s order has been received.
- 16.12 Perini may in its absolute discretion accept non-defective Goods for return in which case Perini may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 16.13 Further to clause 16.12, the Client acknowledges and accepts that in the event that Perini has accepted the return of the Goods that the minimum number of boxes accepted for return shall be not less than three (3) unless otherwise agreed.
- 16.14 Notwithstanding anything contained in this clause if Perini is required by a law to accept a return, then Perini will only accept a return on the conditions imposed by that law.
- 16.15 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Client’s specifications are not acceptable for credit or return.

17. Intellectual Property

- 17.1 Where Perini has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Perini. Under no circumstances may such designs, drawings and documents be used without the express written approval of Perini.

18. Default and Consequences of Default

- 18.1 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 Perini’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes Perini any money, the Client shall indemnify Perini from and against all costs and disbursements:
 - (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;in regard to legal costs on a solicitor and own client basis incurred in exercising Perini’s rights under these terms and conditions, internal administration fees, Perini’s Contract fees owing for breach of these terms and conditions’, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 18.3 Further to any other rights or remedies Perini may have under this Contract, if a Client has made payment to Perini, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Perini under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client’s obligations under this Contract.
- 18.4 Without prejudice to Perini’s other remedies at law Perini shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Perini shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to Perini becomes overdue, or in Perini’s opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Perini;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions (“**the Breaching Party**”) the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 19.2 If Perini, due to reasons beyond Perini’s reasonable control, is unable to deliver any Goods and/or Services to the Client, Perini may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice Perini shall repay to the Client any money paid by the Client for the Goods and/or Services. Perini shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 19.3, the Client will not be liable for the payment of any costs of Perini, except where a deposit is payable in accordance with clause 7.4. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.
- 19.4 Cancellation of orders for Goods made to the Client’s specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

20. Privacy Policy

- 20.1 All emails, documents, images, or other recorded information held or used by Perini is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Perini acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (“the Act”) including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). Perini acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by Perini that may result in serious harm to the Client, Perini will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

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- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Perini in respect of Cookies where the Client utilises Perini's website to make enquiries. Perini agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Perini when Perini sends an email to the Client, so Perini may collect and review that information ("collectively Personal Information")
- If the Client consents to Perini's use of Cookies on Perini's website and later wishes to withdraw that consent, the Client may manage and control Perini's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client agrees that Perini may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.4 The Client consents to Perini being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 20.5 The Client agrees that personal credit information provided may be used and retained by Perini for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.6 Perini may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that Perini is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided Perini is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Perini has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Perini, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.8 The Client shall have the right to request (by e-mail) from Perini:
- (a) a copy of the Personal Information about the Client retained by Perini and the right to request that Perini correct any incorrect Personal Information; and
 - (b) that Perini does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.9 Perini will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.10 The Client can make a privacy complaint by contacting Perini via e-mail. Perini will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 21. Building and Construction Industry Security of Payment Act 2002**
- 21.1 At Perini'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 Payment Act 2002 may apply.
- 21.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 22. Service of Notices**
- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

- 23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Perini may have notice of the Trust, the Client covenants with Perini as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of Perini (Perini will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 24.3 Perini may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 24.4 The Client cannot licence or assign without the written approval of Perini.
- 24.5 Perini may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Perini's sub-contractors without the authority of Perini.
- 24.6 The Client agrees that Perini may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Perini to provide Goods to the Client.
- 24.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Perini, once the parties agree that the Force Majeure event has ceased.
- 24.8 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 24.9 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 24.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.