
Maxim Building Pty Ltd T/A Maxim Building Services – Terms & Conditions of Trade

1. Definitions

- 1.1 “Maxim” means Maxim Building Pty Ltd T/A Maxim Building Services, its successors and assigns or any person acting on behalf of and with the authority of Maxim Building Pty Ltd T/A Maxim Building Services.
- 1.2 “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Maxim to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Works as agreed between Maxim and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with Maxim’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Maxim.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 9 of the Electronic Transactions Act 2000 (NSW) or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Where the Customer is a representative or agent of the owner (and therefore not the owner of the site where Works are to be provided) then the Customer warrants that the Customer has obtained the full consent of the owner for Maxim to provide the Works at the owner’s site. The Customer acknowledges and agrees that they shall:
- (a) upon request from Maxim provide evidence that they have such consent; and
 - (b) be personally liable (where applicable by an agent) for full payment of the Price for all Maxim provided under this contract and to indemnify Maxim against any claim made by the owner of the site (howsoever arising) in relation to the provision of any Works by Maxim, except where such claim has arisen because of the negligence of Maxim when providing the Works.

3. Change in Control

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

4. Price and Payment

- 4.1 At Maxim’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Maxim to the Customer in respect of Works performed or Materials supplied; or
 - (b) Maxim’s quoted Price (subject to clause 4.2) which shall be binding upon Maxim provided that the Customer shall accept Maxim’s quotation in writing within thirty (30) days.
- 4.2 Maxim reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested (including where due to inaccuracies in quantities or dimensions or other information supplied to Maxim for quotation purposes); or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, in accordance with clause 5.2, obscured/latent Site defects, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) as a result of an increase in Maxim’s costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works, or due to relevant industry awards (e.g. site allowance and severance pay), which are outside the control of Maxim.
- 4.3 At Maxim’s sole discretion a deposit may be required.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Maxim, which may be:
- (a) on completion of the Works; or
 - (b) prior to commencement of the Works; or
 - (c) by way of progress payments in accordance with Maxim’s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Maxim.
- 4.5 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Maxim.
- 4.6 Unless otherwise stated the Price includes GST. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of the Works

- 5.1 Subject to clause 5.2 it is Maxim’s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The Works’ commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Maxim claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Maxim’s control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Maxim that the site is ready.
- 5.3 At Maxim’s sole discretion, the cost of delivery is included in the Price.

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- 5.4 Maxim may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time specified by Maxim for delivery of the Works is an estimate only and Maxim will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Maxim is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then Maxim shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 6. Risk**
- 6.1 If Maxim retains ownership of the Materials under clause 10 then:
- (a) where Maxim is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
- (i) the Customer or the Customer's nominated carrier takes possession of the Materials at Maxim's address; or
- (ii) the Materials are delivered by Maxim or Maxim's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- (b) where Maxim is to both supply and install Materials then Maxim shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 6.2 Where the Customer has supplied materials for Maxim to complete the Works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Maxim shall not be responsible for any defects in the materials, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 6.3 The Customer acknowledges that Maxim is only responsible for parts that are replaced by Maxim and that in the event that other parts/Materials, subsequently fail, the Customer agrees to indemnify Maxim against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 6.4 The Customer acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.
- 6.5 Maxim shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Maxim accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 6.6 Notwithstanding the provisions of clause 6.1, where Maxim requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the Site, the Customer shall supply Maxim a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. Additionally, the Customer acknowledges and agrees that it is their responsibility to insure any Materials partly, or completely, installed on Site, against theft or damage. In the event that any of the stored items or partly (or completely) installed Materials are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 6.7 Subject to clause 12, Maxim shall not be liable for any loss or damage or defect in the Works arising from other trades, vandalism or maltreatment.
- 6.8 Where Maxim gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the Site for the Works, and such advice or recommendations are not acted upon, then Maxim shall require the Customer (or their agent) to authorise commencement of the Works in writing. Maxim shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 6.9 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Maxim is requested to merely clear such blockages, Maxim can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Maxim will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.
- 6.10 The Customer acknowledges and agrees that where Maxim has performed temporary repairs that, Maxim:
- (a) offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 6.11 The Customer acknowledges that:
- (a) Maxim is only responsible for components that are replaced by Maxim and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
- (b) where the Customer has supplied goods for Maxim to complete the Works, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those goods; and
- (c) Maxim shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) and (b) applies.
- 6.12 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves, etc.) are of suitable capacity to handle the Materials once installed.
- 6.13 The Customer acknowledges that, under no circumstances, will Maxim handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on Site:
- (a) Maxim shall suspend the Works as per clause 5.2; and
- (b) the Customer shall be fully responsible for the resolution of any resulting problems; and
- (c) any additional cost incurred by Maxim shall be added to the Price under clause 4.2.

7. Customer's Responsibilities

- 7.1 Prior to Maxim commencing the Works the Customer must advise Maxim of the precise location of all services on the Site and clearly mark the same. The mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site. Whilst Maxim will take all care to avoid damage to any underground

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services, the Customer agrees to indemnify Maxim 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 this clause 7.

- 7.2 It is the intention of Maxim, and agreed by the Customer, that it is the responsibility of the Customer to:
- ensure that Maxim has clear and free access to the Site at the agreed date/s and time/s to enable Maxim to undertake the Works. Maxim 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 Maxim's negligence;
 - provide Maxim with facilities, as specified by Maxim, (including, but not limited to, temporary lighting, toilet, eating and first aid facilities or a suitable free power source if require) for the duration of the Works;
 - remove from the work area any furniture, personal effects or other property likely to impede Maxim in order to minimise the risk of injury or any damage; and
 - be responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 7.3 Maxim is not responsible for the removal of the Customer's rubbish from or clean-up of the existing site. This is the responsibility of the Customer or the Customer's agent.

8. Specifications

- 8.1 The Customer acknowledges that:
- all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Maxim's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Maxim;
 - while Maxim may have provided information or figures to the Customer regarding the performance of the Materials, the Customer acknowledges that Maxim has given these in good faith, and are estimates based on industry prescribed estimates.

9. Compliance with Laws

- 9.1 The Customer and Maxim shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 9.2 Maxim shall obtain (at the expense of Maxim) all licenses and approvals that may be required for the Works.
- 9.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

10. Title

- 10.1 Maxim and the Customer agree that ownership of the Materials shall not pass until:
- the Customer has paid Maxim all amounts owing to Maxim; and
 - the Customer has met all of its other obligations to Maxim.
- 10.2 Receipt by Maxim 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.
- 10.3 It is further agreed that:
- until ownership of the Materials passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Maxim on request.
 - the Customer holds the benefit of the Customer's insurance of the Materials on trust for Maxim and must pay to Maxim the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - the production of these terms and conditions by Maxim shall be sufficient evidence of Maxim's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Maxim to make further enquiries.
 - the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Maxim and must pay or deliver the proceeds to Maxim on demand.
 - the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Maxim and must sell, dispose of or return the resulting product to Maxim as it so directs.
 - unless the Materials have become fixtures the Customer irrevocably authorises Maxim to enter any premises where Maxim believes the Materials are kept and recover possession of the Materials.
 - Maxim may recover possession of any Materials in transit whether or not delivery has occurred.
 - the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Maxim.
 - Maxim may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

11. Security and Charge

- 11.1 In consideration of Maxim agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Maxim from and against all Maxim's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Maxim's rights under this clause.
- 11.3 The Customer irrevocably appoints Maxim and each director of Maxim as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

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

- 12.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Maxim in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Maxim to inspect the Materials or to review the Works provided.

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- 12.2 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**).
- 12.3 Maxim acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Maxim makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Maxim's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Maxim's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Maxim is required to replace any Materials under this clause or the CCA, but is unable to do so, Maxim may refund any money the Customer has paid for the Materials.
- 12.7 If Maxim is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Maxim may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 12.8 If the Customer is not a consumer within the meaning of the CCA, Maxim's liability for any defect or damage in the Materials is:
- limited to the value of any express warranty or warranty card provided to the Customer by Maxim at Maxim's sole discretion;
 - limited to any warranty to which Maxim is entitled, if Maxim did not manufacture the Materials;
 - otherwise negated absolutely.
- 12.9 Subject to this clause 12, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 12.1; and
 - Maxim has agreed that the Materials are defective; and
 - the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, Maxim shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly maintain or store any Materials;
 - the Customer using the Materials for any purpose other than that for which they were designed;
 - the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Works by the Customer or any third party without Maxim's prior approval;
 - the Customer failing to follow any instructions or guidelines provided by Maxim;
 - fair wear and tear, any accident, or act of God.
- 12.11 Notwithstanding anything contained in this clause if Maxim is required by a law to accept a return then Maxim will only accept a return on the conditions imposed by that law.

13. Intellectual Property

- 13.1 Where Maxim has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Maxim, and shall only be used by the Customer at Maxim's discretion.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Maxim will not cause Maxim to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Maxim against any action taken by a third party against Maxim in respect of any such infringement.
- 13.3 The Customer agrees that Maxim may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Maxim has created for the Customer.

14. Default and Consequences of Default

- 14.1 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 Maxim's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Maxim any money the Customer shall indemnify Maxim from and against all costs and disbursements incurred by Maxim in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Maxim's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Maxim may have under this contract, if a Customer has made payment to Maxim, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Maxim under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 14.4 Without prejudice to Maxim's other remedies at law Maxim shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Maxim shall, whether or not due for payment, become immediately payable if:
- any money payable to Maxim becomes overdue, or in Maxim's opinion the Customer will be unable to make a payment when it falls due;
 - the Customer has exceeded any applicable credit limit provided by Maxim;
 - the Customer becomes insolvent or bankrupt, 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Cancellation

- 15.1 Without prejudice to any other remedies Maxim may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Maxim may suspend or terminate the supply of Works to the Customer. Maxim will not be liable to the Customer for any loss or damage the Customer suffers because Maxim has exercised its rights under this clause.
- 15.2 Maxim may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice Maxim shall repay to the Customer any sums paid in respect of

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- the Price, less any amounts owing by the Customer to Maxim for Works already performed. Maxim shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Maxim as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 16. Privacy Act 1988**
- 16.1 The Customer agrees that Maxim may obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Maxim.
- 16.2 The Customer agrees that Maxim may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.3 The Customer consents to Maxim being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Customer agrees that personal credit information provided may be used and retained by Maxim for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 16.5 Maxim may give information about the Customer 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 Customer including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
 - (b) name of the credit provider and that Maxim is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer'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, 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 Customer no longer has any overdue accounts and Maxim has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Maxim, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Customer shall have the right to request (by e-mail) from Maxim:
- (a) a copy of the information about the Customer retained by Maxim and the right to request that Maxim correct any incorrect information; and
 - (b) that Maxim does not disclose any personal information about the Customer for the purpose of direct marketing.
- 16.8 Maxim will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Customer can make a privacy complaint by contacting Maxim via e-mail. Maxim will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 17. Dispute Resolution**
- 17.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 18. Building and Construction Industry Payments Act 2004 (where applicable)**
- 18.1 At Maxim's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
- 19. Building and Construction Industry Security of Payments Act 1999 (where applicable)**
- 19.1 At Maxim's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 19.2 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 Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

20. General

- 20.1 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Australia in which Maxim has its principal place of business, and are subject to the jurisdiction of the courts in Australia
- 20.3 Subject to clause 12, Maxim shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Maxim of these terms and conditions (alternatively Maxim's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 20.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Maxim nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.5 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 20.6 The Customer agrees that Maxim may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Maxim to provide any Works to the Customer.
- 20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.