

# McDonald Surveys International Pty Ltd [ACN 154 048 110]

## Terms of Trade

### 1. INCORPORATION OF TERMS

1.1. This Terms of Trade shall be incorporated into each and every contract for the sale of Survey Services which is entered into between MCDONALD SURVEYS and the Customer, by use of the words "MCDONALD SURVEYS' Terms of Trade are incorporated into this Agreement a copy of which is available on request". This includes, but is not limited to the following documents:

- (a) Quotations;
- (b) Acceptance of Purchase Order.

1.2. The Customer's authorization for MCDONALD SURVEYS to commence work after the issue of the Acceptance of the Purchase Order shall constitute acceptance of MCDONALD SURVEYS' Terms of Trade on any quotation, or invoice, issued by or on behalf of MCDONALD SURVEYS.

1.3. These Terms of Trade:

- (a) are current from 1 October 2018;
- (b) apply to all Sale Contracts entered into between MCDONALD SURVEYS and the Customer from 1 October 2018; and
- (c) may be replaced by at any time and, upon such replacement, the newer terms of trade shall prevail over these Terms of Trade.

### 2. FORMATION OF SALE CONTRACT

2.1. If the Customer wishes to engage MCDONALD SURVEYS to carry out the Survey Services, then the Customer must

- (a) submit a request for quote by email which shall include location and address of where the Survey Services are required; and
- (b) where the work is part of a larger tender, then the Customer shall provide MCDONALD SURVEYS with a copy of the tender documents.

2.2. MCDONALD SURVEYS will issue a quote which:

- (a) is valid for 30 days;
- (b) shall include the number of Survey Services to be supplied, the costing for the Survey Services and when monies are due; and
- (c) may include indicative timeframes ("Quote").

2.3. If the Customer wishes to proceed with the order then the Customer shall submit a Purchase Order ("PO") to MCDONALD SURVEYS.

2.4. A Sales Contract is formed between the Customer and MCDONALD SURVEYS upon the terms contained in these Terms of Trade when MCDONALD SURVEYS accepts the PO by providing the Customer with an Acceptance of Purchase Order form ("Acceptance of PO").

2.5. MCDONALD SURVEYS shall not be bound to accept any PO from the Customer which:

- (a) is placed by the Customer more than 30 days after the Quotation is issued; or
- (b) has varied the terms of the Quote provided by MCDONALD SURVEYS; or
- (c) sets to exclude or replace these Terms of Trade

2.6. The Acceptance of PO shall set:

- (a) the timeframes; and
- (b) any variations made in the PO by the Customer that MCDONALD SURVEYS do not agree with.

2.7. If the Customer is not satisfied with the terms in the

Acceptance of PO they may terminate the Contract with notice in writing to MCDONALD SURVEYS.

### 3. PAYMENT OF CONTRACT PRICE

#### 3.1. General Payment Obligations

(a) The Customer agrees to pay the Contract Price as stipulated in the Quote within 14 days of being issued with an invoice by McDonald Surveys, unless alternate payment terms are stipulated in the Quote.

(b) If payments are not received in accordance with clause 3.1(a) then MCDONALD SURVEYS may suspend work until the invoice has been paid in full, and the completion date shall be varied by MCDONALD SURVEYS accordingly.

(c) Unless otherwise directed by MCDONALD SURVEYS the Customer shall pay the invoice amount into the MCDONALD SURVEYS account by electronic funds transfer.

#### 3.2. Disputed Invoices

(a) If the Customer disputes any amount shown on an invoice, they must:

- (i) notify MCDONALD SURVEYS within 7 days of receipt of the invoice; and
- (ii) pay any amounts not in dispute in accordance with Clause 3.1(a).

(b) Disputes arising under Clause 3.2 will be dealt with in accordance with Clause 14.5.

(c) If the disputed amount of the invoice is:

- (i) Greater than 20% or
- (ii) exceeds \$20,000

of the contract MCDONALD SURVEYS has the right to suspend work until the dispute is resolved and the time for completion of works will be extended automatically.

#### 3.3. Consequence of Late Payments and Non Payment

(a) If any amount payable by the Customer is outstanding, then MCDONALD SURVEYS shall be entitled to charge interest on the outstanding amount at a rate of 15% per annum accruing daily until the amount is paid in full.

(b) If the Customer unsuccessfully disputes an invoice on 2 or more occasions MCDONALD SURVEYS may terminate the contract.

### 4. CUSTOMER OBLIGATIONS

#### 4.1. Request For Further Information

(a) After Acceptance of the PO MCDONALD SURVEYS will request further information from the Customer for the Survey Services.

(b) MCDONALD SURVEYS requires the responses to the request for information within 5 Business Days to satisfy the timeframes provided in the Acceptance of PO.

4.2. The Customer acknowledges that the turnaround periods stipulated by MCDONALD SURVEYS in any quotation or Acceptance of PO are not inclusive of the time taken to obtain approval of the site owner for access to the site (if different from the Customer) and that any delays by the Customer in providing the information in clause 4.1 or obtaining consent from the site owner in clause 4.4 will result in delays to the completion date and indemnifies MCDONALD SURVEYS

for any loss arising due to delays to the completion date.

#### 4.3. Mobilization of McDonald Surveys staff and Equipment

- (a) The Customer shall be solely responsible for the following mobilization costs and scheduling:
  - (i) Cost, booking and scheduling of return transport to and from Perth;
  - (ii) Cost, booking and scheduling of accommodation and meals.

#### 4.4. Access & Possession Of Site

- (a) The Customer shall provide MCDONALD SURVEYS with access and possession to the Site during the period that MCDONALD SURVEYS has scheduled to carry out the work for the Job.
- (b) The Customer warrants that the Customer has legal authority to grant McDonald Surveys with access and possession to the Site.

#### 4.5. Traffic Management

- (a) If:
  - (i) the Site is situated on a public road or public access area; or
  - (ii) the Site is situated adjacent to a public road or public access area where work may be carried out by MCDONALD SURVEYS on or near to that public road or public access area, the Customer shall, at the Customer's own cost, provide MCDONALD SURVEYS with traffic management operators and services based on a plan which has been approved by MCDONALD SURVEYS.
- (b) The Customer shall be responsible for publishing any advertisements or notices which are required by reason of the traffic management services required under clause 4.5(a) above.
- (c) The Customer may request that MCDONALD SURVEYS provide the necessary traffic management operators and services which shall constitute a variation to the Sale Contract and the cost of supplying the traffic management operators and services shall be borne solely by the Customer.

#### 4.6. Safe Work Site

The Customer warrants to MCDONALD SURVEYS that:

- (a) there are no hazards on the Site or near to the Site where MCDONALD SURVEYS is required to operate;
- (b) the Site complies with all occupation health and safety laws and requirements.

#### 4.7. Breach Of Customer's Obligations

- (a) If the Customer breaches any of its obligations under clause 4.1 to clause 4.6 above, MCDONALD SURVEYS may suspend work on the Job until such time as the Customer rectifies the default and any schedules for the commencement date and completion date of the Job shall be extended by a period being the greater of:
  - (i) the period of delay caused by the Customer's default; and
  - (ii) 5 business days.
- (b) If the Customer fails to rectify a breach for a period exceeding 14 days, MCDONALD SURVEYS may terminate this Contract and shall be released from any further obligations under the Contract.

## 5. COMMENCEMENT AND PERIOD FOR COMPLETION OF WORK

### 5.1. Programme/Timetable

- (a) The timetable for completion of the work shall be as indicated in the Acceptance of PO provided to the Customer.
- (b) The timeframes as contemplated in the Acceptance of PO may be modified in accordance with this Terms of Trade.
- (c) Any variation to the Sale Contract will extend the completion date by a minimum of 30 days unless otherwise agreed by MCDONALD SURVEYS.

### 5.2. Late Delivery

MCDONALD SURVEYS will not be liable for any loss incurred or suffered by the Customer as a result of any delay in delivery of reports.

## 6. VARIATIONS TO CONTRACTS

### 6.1. Customer Initiated Variation

- (a) During the term of the contract, the Customer may, by notice in the prescribed form direct MCDONALD SURVEYS to vary any aspect of the Survey Services on and from the date specified in the notice.
- (b) If the specifications provided for the purpose of providing the Quote are wrong or need to be amended, such change will be considered a variation to the Sale Contract and the further costs of the changes will be the responsibility of the Customer.
- (c) To the extent that the variations will alter the cost of the Survey Services, such cost will be calculated and MCDONALD SURVEYS will provide the Customer with a revised quote within 14 days of the notice of the Variation.
- (d) If the Customer rejects the revised quote the Customer must elect to:
  - (i) Proceed with the original contract; or
  - (ii) Terminate the contract.
- (e) If the proposed variation to the contract compromises the Standards then MCDONALD SURVEYS will reject the variation and the Customer must elect whether they proceed with the original contract or terminate the contract.
- (f) Any variation to the Sale Contract by the Customer will extend the completion date by a minimum of 30 days unless otherwise agreed by MCDONALD SURVEYS.

### 6.2. MCDONALD SURVEYS Initiated Variation

- (a) If during the performance of its duties under the contract MCDONALD SURVEYS become aware of further additional work required that was not initially quoted then MCDONALD SURVEYS must issue the Customer with a revised quote.
- (b) If the variation to the contract is necessary to comply with a Standard and the Customer rejects the variation then the contract shall be automatically terminated.
- (c) If the variation is otherwise not necessary to comply with a standard and the Customer rejects the variation, then the contract shall continue based on the original quotation.

6.3. The Customer acknowledges that variations to the contract may result in delays to the completion date and hereby indemnifies MCDONALD SURVEYS for any loss arising due to variations causing delays to the completion date.

## 7. SUPPLY OF SURVEY SERVICES

### 7.1. Release of Report

- (a) The report will not pass to the Customer until the

Contract Price is paid in full.

(b) MCDONALD SURVEYS will not be liable for any loss incurred or suffered by the Customer as a result of any delay in delivery of Survey Services or the report as a result of the Customer failing to pay the Contract Price in accordance with these terms.

(c) McDonald Surveys will release the Report to the Customer with 24 hours of receipt of the Contract Price.

## **8. INTELLECTUAL PROPERTY**

8.1. If the Customer requires MCDONALD SURVEYS to design the Survey Services they agree to provide MCDONALD SURVEYS with the following:

(a) access to the Site for a visual inspection;

(b) floor plans of the building;

(c) any other documentation reasonably required by MCDONALD SURVEYS.

8.2. MCDONALD SURVEYS retains all copyright and intellectual property rights in all Reports, photographs, or other electronic or written documents provided to the Customer in performing the Survey Services.

## **9. WARRANTY CLAIMS**

9.1. MCDONALD SURVEYS shall only be liable for claims for defective Survey Services for a period of 7 days from the date of delivery of the Report.

9.2. The Customer must make a valid warranty claim to MCDONALD SURVEYS within the period of 7 days from the date of delivery or collection.

9.3. Upon receipt of a warranty claim from a Customer, MCDONALD SURVEYS shall send an inspector to the Site to validate the claim in which case the claim will be accepted or rejected.

9.4. If the claim is rejected in accordance with clause 9.3 above then the Customer may request that the parties shall jointly appoint an independent consultant to assess the report to determine if there is a defect in the Survey Services.

9.5. If the claim is accepted by MCDONALD SURVEYS in accordance with 9.3 or a determination is made in favour of the Customer at clause 9.4 above then MCDONALD SURVEYS shall review the Survey Services and reissue the report within a reasonable amount of time.

## **10. GENERAL WARRANTIES & REPRESENTATIONS**

10.1. MCDONALD SURVEYS knows of no reason why the Survey Services may not be supplied in accordance with and to the levels stated in this Terms of Trade and,

(a) the provision of the Survey Services and the Customer's use thereof shall not infringe any rights of any third party;

(b) the Survey Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

(c) it shall discharge its obligations pursuant to this Terms of Trade with all due skill, care and diligence including good industry practice and (without limiting the generality of this clause) in accordance with its own established internal procedures.

### **10.2. Limitation Of Liability**

(a) The Customer acknowledges that MCDONALD SURVEYS are not responsible for reviewing the drawings and specifications (if any) supplied in accordance with clause 2.1 to ensure they comply with any applicable Standards for the Site and will only be responsible for ensuring the Survey Services supplied are compliant with the any applicable standards.

(b) Except as expressly stated in these Terms of Trade, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the maximum extent permitted by applicable law.

(c) Any liability owing by MCDONALD SURVEYS under the terms of this agreement for supply of Survey Services is hereby limited to the cost of a site re-visit and reissue of the Survey Services report (if necessary) and does not include economic or consequential loss.

(d) Any liability by any sub-contractors contracted by MCDONALD SURVEYS for the supply of the Survey Services, is hereby limited to the cost of a site re-visit and reissue of the Survey Services report (if necessary) and does not include economic or consequential loss.

## **11. CUSTOMER REPRESENTATIONS & OBLIGATIONS**

The Customer hereby warrants and represents to MCDONALD SURVEYS that:

(a) it will co-operate with MCDONALD SURVEYS (without incurring any expenditure) and provide MCDONALD SURVEYS with such information and assistance as MCDONALD SURVEYS may reasonably require in order to enable or facilitate MCDONALD SURVEYS to duly and punctually to comply with its obligations under these terms.

(b) In the event that MCDONALD SURVEYS considers either that the Customer is in breach of any obligations or that MCDONALD SURVEYS is otherwise unable to perform any obligations as a result of any other act or relevant omission of the Customer (in either case other than the due and proper performance by the Customer of its obligations hereunder) MCDONALD SURVEYS shall only be entitled to rely on such breach act or relevant omission as relieving it from the performance of any of its obligations.

(c) MCDONALD SURVEYS shall reasonably promptly after the alleged breach, act or omission came to its attention have notified the Customer in writing setting out in reasonable detail such breach, act or omission; and to the extent that such breach, act or omission by the Customer precludes or restricts performance by MCDONALD SURVEYS of its obligations.

## **12. TERMINATION FOR CUSTOMER'S BREACH**

12.1. Without limiting the generality of any other clause in the Terms of Trade, MCDONALD SURVEYS may terminate this Terms of Trade immediately by notice in writing if:

(a) any payment due from the Customer to MCDONALD SURVEYS pursuant to this Agreement remains unpaid for a period of 14 days; or

(b) the Customer breaches any clause of this Agreement and such breach is not remedied within 7 days of written notice by MCDONALD SURVEYS.

12.2. Notwithstanding the preceding clause MCDONALD SURVEYS may terminate this Agreement immediately on notice in writing to the Customer if:

(a) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;

(b) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;

- (c) the Customer, being a natural person, dies; or
  - (d) the Customer ceases or threatens to cease conducting its business in the normal manner.
- 12.3. If notice is given to the Customer pursuant to the preceding clauses, MCDONALD SURVEYS may, in addition to terminating the Agreement:
- (a) claim liquidated damages equivalent to the Contract Price;
  - (b) retake possession of all property (including reports, passwords and access codes) of MCDONALD SURVEYS in the possession of the Customer; and
  - (c) pursue any additional or alternative remedies provided by law.
- 13. TERMINATION FOR MCDONALD SURVEYS' BREACH**
- 13.1. If MCDONALD SURVEYS breaches any of its obligations under these Terms of Trade, then the Customer may only terminate these Terms of Trade if:
- (a) the Customer has notified MCDONALD SURVEYS of the alleged breach in writing; and
  - (b) MCDONALD SURVEYS has failed to remedy the default within 28 days of receiving the notice of default from the Customer.
- 13.2. If the Customer terminates this Agreement in accordance with clause 13.1 above then:
- (a) the Customer shall pay any invoice issued under clause 3 for work carried out by MCDONALD SURVEYS up to the date that the Agreement is terminated;
  - (b) MCDONALD SURVEYS shall only be liable to the Customer:
    - (i) for the costs that the Customer incurs to rectify MCDONALD SURVEYS' default; and
    - (ii) up to a maximum amount equal to the payments of the contract price paid to MCDONALD SURVEYS.
- 13.3. The Customer acknowledges and agrees that MCDONALD SURVEYS shall not be liable to the Customer for any economic loss suffered by the Customer including, but not limited to:
- (a) loss of profit, revenue or use; and
  - (b) financial costs including interest incurred on borrowings, by reason of MCDONALD SURVEYS' default.
- 13.4. Notwithstanding any rights that the Customer may have against MCDONALD SURVEYS, the Customer shall not be entitled to withhold or set-off any amounts from any invoice from MCDONALD SURVEYS and must pay the monies owing under any invoice to MCDONALD SURVEYS in full without deduction.
- 14. MISCELLANEOUS**
- 14.1. Quotes**
- Unless otherwise stated in the Quotes:
- (a) all prices in the Quotes are exclusive of GST and sales tax; and
  - (b) all prices are quoted in Australian dollars.
- 14.2. GST**
- (a) The parties acknowledge that the amounts set out in this Agreement are exclusive of GST.
  - (b) The supply of the Survey Services made by MCDONALD SURVEYS to the Customer will be subject to GST which will be added to invoices rendered.
  - (c) The Customer must pay to MCDONALD SURVEYS an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.
- 14.3. Use of Subcontractors**
- (a) The Customer acknowledges that MCDONALD SURVEYS may engage the services of Sub-Contractors. No additional consent, either verbal or

- written will be obtained for the Customer.
- (b) The selection of Sub-Contractors will be at the discretion of MCDONALD SURVEYS, who may, if so required terminate and replace any Sub- Contractor they in their absolute discretion see fit.
  - (c) MCDONALD SURVEYS warrants to the Customer that any Sub-Contractors engaged by MCDONALD SURVEYS will be covered by all necessary insurance, and the Customer will not have the right to raise any further queries in relation to insurance cover of the Sub Contractors or request certificates of currency for those insurance policies.
- 14.4. Personal Property Securities Act**
- (a) MCDONALD SURVEYS may register its security interest over Survey Services, where the Survey Services have been collected or delivered and the Contract Price has not been paid in full, on the PPS Register and the Customer shall indemnify MCDONALD SURVEYS for the costs of registering those interests.
  - (b) The Customer agrees to provide to MCDONALD SURVEYS all the necessary information to enable MCDONALD SURVEYS to register a financing statement which complies with the PPSA and PPSReg.
- 14.5. Dispute Resolution.**
- (a) If a dispute arises in connection with this Terms of Trade, a party to the dispute must give to the other party to the dispute notice specifying the dispute and requiring its resolution under this clause ("Notice of Dispute").
  - (b) If the dispute is not resolved within seven (7) Business Days after the Notice of Dispute is issued, the dispute will be referred to arbitration. The arbitration must be conducted in Western Australia by a single arbitrator.
  - (c) If the parties have not agreed upon the arbitrator, the arbitrator is the person appointed by the Chair of the WA Perth Chapter of the Resolution Institute or the Chair's nominee, acting on the request of a party, and:
    - (i) the arbitrator must not be a present or former member, officer, employee or agent of a party or a person who has acted as a mediator or advised a party in connection with the dispute;
    - (ii) the arbitration must be conducted in accordance with the *Commercial Arbitration Act 1985 (WA)* ("Arbitration Act") except that:
      - (iii) the arbitrator must only accept evidence which would be accepted in a court of law;
      - (iv) a party may be represented by a qualified legal practitioner or other representative;
      - (v) the arbitrator must include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
      - (vi) the parties consent to an appeal to the Supreme Court of Western Australia on any question of law arising in the course of the arbitration or out of an arbitration award; and
  - (d) after accepting the appointment and during the arbitration the arbitrator may:
    - (i) require the parties to lodge security or further security towards the arbitrator's fees and expenses; and
    - (ii) apply any security towards those fees and expenses, but the arbitrator may not direct a party

to provide security for the costs of the arbitration to be incurred by the other parties.

14.6. This clause does not prevent a party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

14.7. If a dispute is referred to arbitration, MCDONALD SURVEYS may suspend work until the dispute is resolved.

14.8. This clause continues in force even where the Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the contract for any reason.

## **15. GENERAL**

### **15.1. Entire Agreement**

This Agreement shall constitute the whole agreement between the parties hereto in respect of the subject matter of this Agreement provided that nothing in this clause 15 shall limit a Party's liability for fraudulent misrepresentation.

### **15.2. Variation**

This Agreement shall be capable of being varied only by a written instrument signed by a duly authorised officer or other representative of each of the Parties.

### **15.3. Severability**

This Agreement is severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement.

### **15.4. No Partnership, etc.**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the Parties hereto or constitute or be deemed to constitute either Party the agent of the other for any purpose whatsoever and neither Party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.

### **15.5. Waiver**

Unless otherwise agreed in writing, no failure by either Party to exercise any right or remedy available to it hereunder nor any delay so to exercise any such right to remedy shall operate as a waiver of it nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

### **15.6. Notices**

Any notice to be given hereunder by either Party to the other shall be in writing and delivered personally, sent by pre-paid recorded delivery or registered post to the addressee at the addressee's registered office for the time being or by telefax and shall be deemed to be received if delivered personally at the time of receipt if sent by post at the expiration of 72 hours after being placed in the post (having been correctly addressed) whether or not received or if by telefax 24 hours after dispatch to the correct telex number or telefax number of the addressee.

### **15.7. Indemnities**

Where any indemnity ("Indemnity") is given by one Party ("Indemnifying Party") to the other ("Other Party") the following terms shall apply to any claim, demand or action to which the Indemnity applies (in this clause 15.7, "Relevant Claim"):

(a) the Indemnifying Party shall indemnify the Other Party against its legal costs and disbursements in

relation to the Relevant Claim on a solicitor/ client basis;

(b) each Party shall promptly notify the other of any circumstances that could reasonably give rise to a Relevant Claim;

(c) the Other Party shall not make any admission or compromise (save where required by court order or governmental regulations) which is prejudicial to the defence or settlement of any matter in respect of any to which the Indemnity applies without the consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed;

(d) the Other Party shall supply all reasonable assistance required by the Indemnifying Party for the purpose of contesting any Relevant Claim on receiving an indemnity from the Indemnifying Party in a form reasonably acceptable to it against its costs and expenses (including legal costs and disbursements on a solicitor/ client basis) incurred in doing so.

### **15.8. Third Party Rights**

No third party shall have any rights in connection with this Agreement.

### **15.9. Force Majeure**

(a) The obligations of MCDONALD SURVEYS to perform any Sale Contract will be suspended for the duration of any delay arising from circumstances outside the reasonable control of MCDONALD SURVEYS, including but not limited to, war, accident, fire, storm, flood, earthquake, labour dispute, plant equipment breakdowns, unavailability of materials.

(b) MCDONALD SURVEYS shall not be liable for any delay or failure to carry out its obligations under this agreement caused by Force Majeure.

### **15.10. Governing Law and Jurisdiction**

This Agreement shall be governed and construed in accordance with the laws of Western Australia. The parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of Western Australia.

## **16. DEFINITIONS AND INTERPRETATION**

16.1. The terms defined have the same meanings when used throughout this Agreement.

16.2. Unless the contrary intention appears:

(a) a reference to this Agreement or any other document includes any variation

(b) or replacement of it;

(c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(d) the singular includes the plural and vice versa;

(e) a reference to a person includes a reference to the person's executors, administrators, successors, transferors, substitutes (including persons taking by novation) and assigns;

(f) an agreement, representations or warranty on the part of or in favour of two (2) or more persons binds or is for the benefit of them jointly and severally;

(g) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated exclusive of that day;

(h) a reference to time shall mean Western Standard Time;

(i) a term or definition incorporated by reference into this Agreement remains in force notwithstanding that the document from which it was referred may at any time

be no longer in force; and

(j) gender reference includes all genders.

16.3. Headings are inserted for convenience and do not affect the interpretation of this Agreement.

16.4. The following words have the following meanings:

**"MCDONALD SURVEYS"** means McDonald Surveys International Pty Ltd [ACN 154 048 110];

**"Business Day"** means any day on which trading banks in Western Australia are open for business;

**"Customer"** means any Person to whom MCDONALD SURVEYS provides Survey Services;

**"Contract Price"** means the aggregate amount payable by the Customer to MCDONALD SURVEYS including any additional variation costs;

**"Day"** means the period of time commencing at midnight and ending 24 hours later;

**"Survey Services"** means any one or more of the following:

1. Conditions surveys
2. Dilapidation surveys
3. Civil and infrastructure set out
4. Rail survey
5. Rail scanning
6. Commercial multi-storey building set out
7. Control networks
8. Monitoring surveys
9. Volumetric surveys and associated reports
10. As-built surveys
11. Topographic surveys
12. Façade and internal building surveys
13. Machine control
14. Marine set out
15. Virtual Scene Recording

**"Loss"** means any delay, loss, liability, damage, expense or cost, and includes, without limitation, direct or consequential loss or damage.

**"Person"** includes a firm, a body corporate, an unincorporated association and an authority;

**"PPSA"** means the *Personal Property Securities Act 2009*, as amended.

**"PPSReg"** means the *Personal Property Securities Regulations 2010*, as amended.

**"PPS Register"** means the Personal Property Securities Register established pursuant to the *Personal Property Securities Act 2009*.

**"Sale Contract"** means a contract for the sale of Survey Services formed between MCDONALD SURVEYS and the Customer pursuant to clause 2.1 of these Terms of Trade;

**"Schedule"** means the time frame indicated by MCDONALD SURVEYS for the completion of works

**"Site"** means a place nominated by the Customer where the Survey Services are to be carried out;

**"Standards"** means any of the Australian Standards;

**"Terms of Trade"** means these terms and conditions of sale.