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## Roof Co Group – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “RCG” means Roof Co Group, its successors and assigns or any person acting on behalf of and with the authority of Roof Co Group.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by RCG to the Client at the Client’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 RCG and the Client in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound by these terms and conditions if the Client places an order for or accepts delivery of any Works. By writing or by signing a work approval form.
- 2.2 Once the Client has placed the order for the Works, the Client is responsible for the cost of any Materials, purchased by RCG and the delivery costs associated with those Materials that are non-refundable by the supplier, even if the Client subsequently withdraws their order for the Works to commence.
- 2.3 Once the Client has placed the order for the Works, the Client is responsible for any other costs that may be associated with the cancellation of works including any delivery cost of Guard rail installation, Crane hire and Scissor Lift hire that has been scheduled and or purchased and is non refundable by the supplier to RCG, even if the Client subsequently withdraws their order for the Works to commence.
- 2.4 These terms and conditions may only be amended with RCG’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and RCG.

### 3. Change in Control

- 3.1 The Client shall give RCG 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, or business practice). The Client shall be liable for any loss incurred by RCG as a result of the Client’s failure to comply with this clause.

### 4. Price and Payment

- 4.1 At RCG’ sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by RCG to the Client in respect of Works performed or Materials supplied; or
  - (b) RCG’ Price at the date of delivery of the Works according to RCG’ current pricelist; or
  - (c) RCG’ quoted Price (subject to clause 4.2) which shall be binding upon RCG provided that the Client shall accept RCG’ quotation in writing within thirty (30) days.
- 4.2 RCG reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; 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, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, discovery of asbestos, synthetic mineral fibres or other hazardous materials, or hidden pipes and wiring in framing, etc.) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to RCG in the cost of labour or materials which are beyond RCG’ control.
- 4.3 At RCG’ sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by RGC, which may be:
  - (a) on completion of the Works; or
  - (b) before delivery of the Materials; or
  - (c) by way of progress payments in accordance with RCG’ 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 Client by RCG.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and RCG.
- 4.6 RCG reserves the right to charge fix rate pricing for all works without having to disclose the break down of the pricing to the client and or any other company or person acting on behalf of the client.

### 5. Delivery of the Works

- 5.1 Subject to clause 5.2 it is RCG’ 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 where completion is delayed by an event beyond RCG’ control, including but not limited to:
  - (a) any failure by the Client to make a selection; or
  - (b) any failure by the Client to have the site ready for the Works; or
  - (c) delay in the completion of RCG’ prior-scheduled jobs; or
  - (d) adverse weather; or
  - (e) illness or injury of RCG’ workers; or.
  - (f) mechanical or other failure of motor vehicles, machinery or equipment
- 5.3 At RCG’ sole discretion the cost of delivery is included in the price.
- 5.4 The Client must take delivery by receipt or collection of the Works whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Works as arranged then RCG shall be entitled to charge a reasonable fee for redelivery and/or storage of Materials.

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- 5.5 RCG 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.
- 5.6 The Client shall take delivery of the Materials tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.7 Any time or date given by RCG to the Client is an estimate only. RCG shall not be liable for any loss or damage whatsoever due to failure by RCG to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of RCG.
- 5.8 Where suspension or termination of the Works is due to the fault of RCG, then the Client shall be liable for the full amount of the quoted Works which shall become immediately due and payable, unless otherwise agreed to by both parties.

### 6. Risk

- 6.1 If RCG retains ownership of the Materials under clause 10 then:
- (a) where RCG is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client 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 Client or the Client's nominated carrier takes possession of the Materials at RCG' address; or
    - (ii) the Materials are delivered by RCG or RCG' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where RCG is to both supply and install Materials then RCG 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 Client.
- 6.2 Notwithstanding the provisions of clause 6.1 if the Client specifically requests RCG to leave Materials outside RCG' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 6.3 The Client acknowledges that Materials supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. RCG will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.4 The Client 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 All potential waterproofing surfaces are subject to an inspection by RCG prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then RCG reserves the right to halt the Works until such time as it is agreed between RCG and the Client as to the additional cost in further preparation of the surface in order to make it fit for waterproofing. The additional cost shall be charged as a variation to the quotation as per clause 4.2.
- 6.6 RCG shall not be held responsible for any damage to the Works caused by outside agents. Where the Client requests RCG to repair such damage then RCG reserves the right to charge the Client for any costs incurred in rectifying such damage.
- 6.7 The Client acknowledges that RCG is only responsible for Materials that are replaced by RCG and does not at any stage accept any liability in respect of previous or subsequent services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify RCG against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

### 7. Further leaks subsequent to completion of Works and resultant damage

- 7.1 All repairs stated in the quotation will rectify all defects causing leaks that RCG identifies in its inspection. Although it is unlikely, there is the possibility that additional unforeseen defects may be contributing to these defects. In this case, the resolution of the leak can only occur after a process of elimination, as the leak can be entering through multiple entry points.
- 7.2 RCG does not take responsibility for any damage whatsoever which occurs due to additional water leaks not identified in the quotation. The Client understand that water leak detection is an extremely difficult undertaking and in this regard, RCG is experienced and will do its best, however it is not always possible to guarantee that a future leak will not occur. In some cases, upon completion of the Works, RCG is able to provide a written guarantee that the repaired area will not leak in the future.
- 7.3 If RCG does provide a written guarantee, and the repaired area leaks again, RCG will return to the site and rectify the defect free of charge. If RCG is unable to rectify the defect it will refund the Client's money in full.
- 7.4 If the leak has been identified as an additional defect (due to there being multiple entry points), then the additional works will be quoted and submitted for the Client's approval.
- 7.5 RCG does not take responsibility for any internal damage to your property or contents caused by water ingress either before or after our roof repairs & roof inspections are complete. Our recommended roof repairs are based on our industry experience & result from a process of elimination. On some occasions additional staged works may be required to resolve the leak. We recommend waiting until the area has been well tested through multiple different style rain events to be sure it no longer leaks before you arrange to repair the internal damage. Any home contents that you do not want damaged should be moved away from the affected area.

### 8. Client Responsibilities

- 8.1 It is the intention of RCG and agreed by the Client that it is the responsibility of the Client to:
- (a) ensure that any surface requiring waterproofing is suitable for the purpose. In the event that the Client requests RCG to prepare the surface for waterproofing, then at RCG' sole discretion a fee shall be charged for the Works, and shall become immediately due and payable.

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- (b) ensure that no other trades men work on the membrane applied to the surface, until the membrane is fully dried and cured to manufacturer's specifications. RCG shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
- 8.2 It is the Client's responsibility to:
- (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
  - (b) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between RCG and the Client, any additional costs will be invoiced to the Client as an extra; and
  - (c) provide adequate dust sheets to protect the Client's furniture and décor. RCG will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any repair or installation Works; and
  - (d) maintain and keep the roof and gutters clean subsequent to the Works performed by RCG to maintain the effectiveness of any leak repair work;
  - (e) fully disclose any information that may affect RCG' installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, any hazardous chemicals, electrical and/or plumbing hazards, asbestos or synthetic mineral fibres); and
  - (f) advise of any other works being carried out by any third parties and notify other parties that may be affected by the Works being provided by RCG, including, but not limited to, tenants and neighbours, other tradesmen.
- 9. Access**
- 9.1 The Client shall ensure that RCG has clear and free access to the work site at all times to enable them to undertake the Works. RCG 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 RCG.
- 10. Title**
- 10.1 RCG and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid RCG all amounts owing to RCG ; and
  - (b) the Client has met all of its other obligations to RCG.
- 10.2 Receipt by RCG 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:
- (a) until ownership of the Materials passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to RCG on request.
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for RCG and must pay to RCG the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
  - (c) the production of these terms and conditions by RCG shall be sufficient evidence of RCG' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with RCG to make further enquiries.
  - (d) the Client 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 Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for RCG and must pay or deliver the proceeds to RCG on demand.
  - (e) the Client should not convert or process the Materials 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 RCG and must sell, dispose of or return the resulting product to RCG as it so directs.
  - (f) unless the Materials have become fixtures the Client irrevocably authorises RCG to enter any premises where RCG believes the Materials are kept and recover possession of the Materials.
  - (g) RCG may recover possession of any Materials in transit whether or not delivery has occurred.
  - (h) the Client 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 RCG
  - (i) RCG may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 11. Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 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 Materials that have previously been supplied and that will be supplied in the future by RCG to the Client.
- 11.3 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 RCG may reasonably require to:
    - (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 11.3(a)(i) or 11.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, RCG 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 Materials charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of RCG.
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of RCG; and
  - (e) immediately advise RCG of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

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- 11.4 RCG 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.
- 11.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by RCG, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client shall unconditionally ratify any actions taken by RCG under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 12. Security and Charge

- 12.1 In consideration of RCG agreeing to supply the Materials, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies RCG from and against all RCG costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RCG' rights under this clause.
- 12.3 The Client irrevocably appoints RCG and each director of RCG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

- 13.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify RCG 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 Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow RCG to inspect the Materials or to review the Works provided.
- 13.2 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**).
- 13.3 RCG acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, RCG makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. RCG' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, RCG' liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If RCG is required to replace any Materials under this clause or the CCA, but is unable to do so, RCG may refund any money the Client has paid for the Materials.
- 13.7 If RCG 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 RCG may refund any money the Client 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 Client which were not defective.
- 13.8 If the Client is not a consumer within the meaning of the CCA, RCG' liability for any defect or damage in the Materials is:
  - (a) limited to the value of any express warranty or warranty card provided to the Client by RCG at RCG' sole discretion;
  - (b) limited to any warranty to which RCG is entitled, if RCG did not manufacture the Materials;
  - (c) otherwise negated absolutely.
- 13.9 Subject to this clause 13, returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 13.1; and
  - (b) RCG has agreed that the Materials are defective; and
  - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 13.10 Notwithstanding clauses 13.1 to 13.9 but subject to the CCA, RCG 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 Materials;
  - (b) the Client using the Materials for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Works by the Client or any third party without RCG' prior approval;
  - (e) the Client failing to follow any instructions or guidelines provided by RCG
  - (f) fair wear and tear, any accident, or act of God.
- 13.11 Notwithstanding anything contained in this clause if RCG is required by a law to accept a return then RCG will only accept a return on the conditions imposed by that law.

### 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 RCG' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes RCG any money the Client shall indemnify RCG from and against all costs and disbursements incurred by RCG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RCG' contract default fee, and bank dishonour fees).

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- 14.3 If the client owes RCG any money RCG may take the matter to QCAT to recover outstanding payments, the client will be liable for any payable fees associated with the claim against the client, this includes additional administrative fees and any accrued interest for the amount outstanding. Fees and interest may be waived at the discretion of RCG.
- 14.4 Without prejudice to any other remedies RCG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RCG may suspend or terminate the supply of Works to the Client. RCG will not be liable to the Client for any loss or damage the Client suffers because RCG has exercised its rights under this clause.
- 14.5 Without prejudice to RCG other remedies at law RCG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to RCG shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to RCG becomes overdue, or in RCG's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 15. Cancellation

- 15.1 RCG 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 Client. On giving such notice RCG shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to RCG for Works already performed. RCG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by RCG as a direct result of the cancellation (including, but not limited to, any loss of profits).

### 16. Privacy Act 1988

- 16.1 The Client agrees for RCG to 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 Client in relation to credit provided by RCG.
- 16.2 The Client agrees that RCG 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 years.
- 16.3 The Client consents to RCG being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by RCG 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 Client'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 Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Works.
- 16.5 RCG 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.
- 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 RCG 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, 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 RCG has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of RCG 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).
- 16.7 The Client shall have the right to request (by e-mail) from RCG
- (a) a copy of the information about the Client retained by RCG and the right to request that RCG correct any incorrect information; and
  - (b) that RCG does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 RCG will destroy personal information upon the Client'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 Client can make a privacy complaint by contacting RCG via e-mail. RCG 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://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

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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. Compliance with Laws**

- 18.1 The Client and RCG 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.
- 18.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 18.3 The Client 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.

### **19. Building and Construction Industry Payments Act 2004 (where applicable)**

- 19.1 At RCG' 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.
- 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 Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

### **20. Building and Construction Industry Security of Payments Act 1999 (where applicable)**

- 20.1 At RCG' 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.
- 20.2 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.

### **21. General**

- 21.1 The failure by RCG to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RCG' 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.
- 21.2 The Client shall indemnify RCG against any losses, damages or costs arising from any claim or suit against RCG and the attendance of RCG or RCG' employees where RCG and employees of RLS are not the cause of such losses, damages or costs.
- 21.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which RCG has its principal place of business, and are subject to the jurisdiction of the courts of Ipswich in Queensland.
- 21.4 Subject to clause 13, RCG shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RCG of these terms and conditions (alternatively RCG' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 21.5 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 RLS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.6 RCG may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.7 The Client agrees that RCG may amend these terms and conditions at any time. If RCG makes a change to these terms and conditions, then that change will take effect from the date on which RCG notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for RCG to provide any Works to the Client.
- 21.8 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.
- 21.9 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.