
Roof Leak Services – Terms & Conditions of Trade

1. Definitions

- 1.1 "RLS" means William Ashley Mitchell T/A Roof Leak Services, its successors and assigns or any person acting on behalf of and with the authority of William Ashley Mitchell T/A Roof Leak Services.
- 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 RLS 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 RLS 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, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with RLS' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and RLS.

3. Change in Control

- 3.1 The Client shall give RLS 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 RLS as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At RLS' sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by RLS to the Client in respect of Works performed or Materials supplied; or
 - (b) RLS' Price at the date of delivery of the Works according to RLS' current pricelist; or
 - (c) RLS' quoted Price (subject to clause 4.2) which shall be binding upon RLS provided that the Client shall accept RLS' quotation in writing within thirty (30) days.
- 4.2 RLS 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 RLS in the cost of labour or materials which are beyond RLS' control.
- 4.3 At RLS' 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 RLS, 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 RLS' 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 RLS.
- 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 RLS.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to RLS an amount equal to any GST RLS must pay for any supply by RLS under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of the Works

- 5.1 Subject to clause 5.2 it is RLS' 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 RLS claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond RLS' control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify RLS that the site is ready.
- 5.3 At RLS' 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 RLS shall be entitled to charge a reasonable fee for redelivery and/or storage of Materials.
- 5.5 RLS 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

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- (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.7 Any time or date given by RLS to the Client is an estimate only. RLS shall not be liable for any loss or damage whatsoever due to failure by RLS to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of RLS.
- 5.8 Where suspension or termination of the Works is bit due to the fault of RLS, 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 RLS retains ownership of the Materials under clause 10 then:
- (a) where RLS 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 RLS' address; or
- (ii) the Materials are delivered by RLS or RLS' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where RLS is to both supply and install Materials then RLS 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 RLS to leave Materials outside RLS' 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. RLS 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 RLS prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then RLS reserves the right to halt the Works until such time as it is agreed between RLS 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 RLS shall not be held responsible for any damage to the Works caused by outside agents. Where the Client requests RLS to repair such damage then RLS reserves the right to charge the Client for any costs incurred in rectifying such damage.
- 6.7 The Client acknowledges that RLS is only responsible for Materials that are replaced by RLS 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 RLS against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

7. Accuracy of Client's Plans and Measurements

- 7.1 RLS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, RLS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

8. Client Responsibilities

- 8.1 It is the intention of RLS 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 RLS to prepare the surface for waterproofing, then at RLS' sole discretion a fee shall be charged for the Works, and shall become immediately due and payable.
- (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. RLS 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 RLS 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. RLS 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 RLS to maintain the effectiveness of any leak repair work;
- (e) fully disclose any information that may affect RLS' 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 RLS, including, but not limited to, tenants and neighbours, other tradesmen.

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9. Access

- 9.1 The Client shall ensure that RLS has clear and free access to the work site at all times to enable them to undertake the Works. RLS 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 RLS.

10. Title

- 10.1 RLS and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid RLS all amounts owing to RLS; and
 - (b) the Client has met all of its other obligations to RLS.
- 10.2 Receipt by RLS 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 RLS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for RLS and must pay to RLS 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 RLS shall be sufficient evidence of RLS' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with RLS 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 RLS and must pay or deliver the proceeds to RLS 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 RLS and must sell, dispose of or return the resulting product to RLS as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises RLS to enter any premises where RLS believes the Materials are kept and recover possession of the Materials.
 - (g) RLS 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 RLS.
 - (i) RLS 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 RLS 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 RLS 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, RLS 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 RLS;
 - (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 RLS; and
 - (e) immediately advise RLS 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.
- 11.4 RLS 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 RLS, 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 RLS 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 RLS 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 RLS from and against all RLS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RLS' rights under this clause.

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- 12.3 The Client irrevocably appoints RLS and each director of RLS 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 RLS 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 RLS 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 RLS 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, RLS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. RLS' 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, RLS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If RLS is required to replace any Materials under this clause or the CCA, but is unable to do so, RLS may refund any money the Client has paid for the Materials.
- 13.7 If RLS 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 RLS 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, RLS' 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 RLS at RLS' sole discretion;
 - (b) limited to any warranty to which RLS is entitled, if RLS 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) RLS 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, RLS 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 RLS' prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by RLS;
 - (f) fair wear and tear, any accident, or act of God.
- 13.11 Notwithstanding anything contained in this clause if RLS is required by a law to accept a return then RLS 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 RLS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes RLS any money the Client shall indemnify RLS from and against all costs and disbursements incurred by RLS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RLS' contract default fee, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies RLS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RLS may suspend or terminate the supply of Works to the Client. RLS will not be liable to the Client for any loss or damage the Client suffers because RLS has exercised its rights under this clause.
- 14.4 Without prejudice to RLS' other remedies at law RLS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to RLS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to RLS becomes overdue, or in RLS' 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 RLS 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 RLS shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to RLS for Works already performed. RLS 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 RLS as a direct result of the cancellation (including, but not limited to, any loss of profits).

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16. Privacy Act 1988

- 16.1 The Client agrees for RLS 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 RLS.
- 16.2 The Client agrees that RLS 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 RLS 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 RLS 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 RLS 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 RLS 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 RLS has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of RLS, 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 RLS:
- (a) a copy of the information about the Client retained by RLS and the right to request that RLS correct any incorrect information; and
 - (b) that RLS does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 RLS 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 RLS via e-mail. RLS 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.

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. Compliance with Laws

- 18.1 The Client and RLS 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 RLS' 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 RLS' 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.

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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 RLS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RLS' 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 RLS against any losses, damages or costs arising from any claim or suit against RLS and the attendance of RLS or RLS' employees where RLS 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 RLS 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, RLS 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 RLS of these terms and conditions (alternatively RLS' 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 RLS 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 RLS may amend these terms and conditions at any time. If RLS makes a change to these terms and conditions, then that change will take effect from the date on which RLS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for RLS 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.