

1. Definitions

- 1.1 **“Air Roofing”** means Air Roofing Co Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Air Roofing Co Pty Ltd.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Air Roofing to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using Air Roofing’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.1 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.2 **“Intended Use”** means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.3 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.4 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between Air Roofing and the Client in accordance with clause 6 below.
- 1.5 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Air Roofing 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).
- 1.6 **“Worksite”** means the address nominated by the Client to which the Materials are to be supplied by Air Roofing.

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 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with Air Roofing and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Air Roofing reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by Air Roofing in relation to Materials or Works supplied is given in good faith to the Client, or the Client’s agent and is based on Air Roofing’s own knowledge and experience and shall be accepted without liability on the part of Air Roofing. Where such advice or recommendations are not acted upon then Air Roofing shall require the Client or their agent to authorise commencement of the Works in writing. Air Roofing shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 1.6 The Client acknowledges that Air Roofing shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Air Roofing, that person shall have the full authority of the Client to order any Works and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to Air Roofing for all additional costs incurred by Air Roofing (including Air Roofing’s profit margin) in providing any Works or variation/s requested thereto by the Client’s duly authorised representative.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that Air Roofing shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Air Roofing in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Air Roofing in respect of the Works.

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- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Air Roofing; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4.3 In circumstances where the Client is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order Materials or not). ("**Client Error**"). The Client must pay for all Materials it orders from Air Roofing notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. Air Roofing is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Clients Errors.

5. Change in Control

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

6. Price and Payment

- 6.1 At Air Roofing's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Air Roofing to the Client in respect of Works performed or Materials supplied; or
 - (b) Air Roofing's quoted Price (subject to clause 6.2) which shall be binding upon Air Roofing provided that the Client shall accept Air Roofing's quotation in writing within thirty (30) days.
- 6.2 Air Roofing 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, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Air Roofing in the cost of labour or Materials (including, but not limited to, overseas transactions that may increase, as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, etc.) which are beyond Air Roofing's control; or
 - (e) in the event of increases to Air Roofing in the cost of labour or Materials which are beyond Air Roofing's control.
- 6.3 Variations will be charged for on the basis of Air Roofing's quotation, and will be detailed in writing, and shown as variations on Air Roofing's invoice. The Client shall be required to respond to any variation submitted by Air Roofing within ten (10) working days. Failure to do so will entitle Air Roofing to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Air Roofing's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Air Roofing, which may be:
- (a) on completion of the Works; or
 - (b) by way of instalments/progress payments in accordance with Air Roofing's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Air Roofing.
- 6.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Air Roofing.
- 6.7 Air Roofing may in its discretion allocate any payment received from the Client towards any invoice that Air Roofing determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Air Roofing may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Air Roofing, payment will be deemed to be allocated in such manner as preserves the maximum value of Air Roofing's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Air Roofing nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify Air Roofing in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Air Roofing investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Air Roofing placing the Client's account into default and subject to default interest in accordance with clause 20.1.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Air Roofing an amount equal to any GST Air Roofing must pay for any supply by Air Roofing under this or any other contract 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.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is Air Roofing's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Air Roofing claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Air Roofing's control, including but not limited to any failure by the Client to:

- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify Air Roofing that the Worksite is ready.
- 7.3 At Air Roofing's sole discretion, the cost of delivery is in addition to the Price.
- 7.4 Any time specified by Air Roofing for delivery of the Works is an estimate only and Air Roofing will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Air Roofing is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Air Roofing shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8. Risk**
- 8.1 If Air Roofing retains ownership of the Materials under clause 15 then:
- (a) where Air Roofing 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 the Materials are delivered by Air Roofing or Air Roofing's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); and
 - (b) where Air Roofing is to both supply and install Materials then Air Roofing 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.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests Air Roofing to leave Materials outside Air Roofing's 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.
- 8.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures and/or plumbing or risk), Air Roofing, or Air Roofing's employees, and/or third party contractors reasonably form the opinion that the Client's premises is not safe for the Works to proceed then Air Roofing shall be entitled to delay the provision of the Works (in accordance with clause 7.2) until Air Roofing is satisfied that it is safe for the installation to proceed.
- 8.4 All potential waterproofing surfaces are subject to an inspection by Air Roofing prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then Air Roofing reserves the right to halt the Works until such time as it is agreed between Air Roofing 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 6.2.
- 8.5 The Client acknowledges and accepts that:
- (a) choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, Air Roofing cannot give any guarantee against reoccurrence or further damage. In the event that the Client requests Air Roofing to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and Air Roofing does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, Air Roofing may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment;
 - (b) Air Roofing's quotation for repairs to existing roofs shall be based only on the replacement of damaged roofing/cladding and/or any other roofing materials and shall not include the replacement of roofing/cladding and/or any other roofing materials with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of roofing/cladding and/or any other roofing materials that have slight imperfections, but Air Roofing does not deem to be defective or affect the integrity of the roof then this shall be a variation to the original quotation and clause 6.2 will apply;
 - (c) no persons other than those authorised or employed by Air Roofing are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. Air Roofing shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause;
 - (d) Air Roofing accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks;
 - (e) it is their responsibility to ensure that any uncompleted areas are kept watertight during construction if there is any delay in the Works due to circumstances beyond the control of Air Roofing (including, but not limited to, waiting on another trade, materials, or weather conditions). Air Roofing will accept no liability whatsoever for any damages caused as a result of the Client's failure to comply with this clause;
 - (f) they shall remove any tangible items susceptible to damage from the vicinity of the Works (and provide protection where necessary), and agrees that Air Roofing shall not be liable for any damage caused to those items through the Client's failure to comply with this clause;
 - (g) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims or drainage components used due to the difference in metal alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Materials; and
 - (h) where the Air Roofing has performed temporary repairs that:
 - (i) Air Roofing offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) Air Roofing will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required; and
 - (i) Materials (including but not limited to timber, steel, roofing/cladding, etc.) supplied may:
 - (i) exhibit variations in shade, colour, texture, surface, markings, finish, and may contain natural fissures, occlusions, lines, indentations. Air Roofing 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;
 - (ii) fade or change colour over time;
 - (iii) contract or distort as a result of exposure to heat, cold, or weather;

- (iv) mark or stain if exposed to certain substances; and
- (v) be damaged or disfigured by impact or scratching.

9. Dimensions, Plans and Specifications

- 9.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Materials unless Air Roofing and the Client agree otherwise in writing.
- 9.2 Air Roofing shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 9.3 If the giving of an estimate or quotation for the supply of Materials involves Air Roofing estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of Air Roofing's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 9.4 Should the Client require any changes to Air Roofing's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

10. Asbestos / Hazardous Materials

- 10.1 Prior to Air Roofing commencing the Works the Client must advise Air Roofing of the precise location of all known Asbestos / Hazardous Materials on the worksite and clearly mark the same.
- 10.2 In the event that any work is undertaken by the Client (or any third party on behalf of the Client), then it shall be the Client's responsibility to ensure that work is executed in accordance with clause 13.1. Air Roofing shall not be liable for any loss or damage, howsoever caused, as a result of any work performed by the Client (or any third party on behalf of the Client).

11. Worksite Access and Condition

- 11.1 Air Roofing is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by Air Roofing will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 11.2 It is the intention of Air Roofing and agreed by the Client that:
 - (a) the Client shall ensure that Air Roofing has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). Air Roofing shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Air Roofing; and
 - (b) it is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify Air Roofing against all costs incurred by Air Roofing in recovering such vehicles in the event they become bogged or otherwise immovable; and
 - (c) it is the Client's responsibility to provide Air Roofing, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - (d) where Air Roofing requires that Materials, fittings and appliances, or plant and tools required for the Works to be stored at the Worksite, the Client shall supply Air Roofing a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 11.3 The Client agrees to be present at the Worksite when and as reasonably requested by Air Roofing and its employees, Air Roofing's and/or agents.
- 11.4 *Worksite Inductions*
 - (a) in the event the Client requires an employee or sub-contractor of Air Roofing to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay Air Roofing's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where Air Roofing is in control of the Worksite, the Client and/or the Client's third-party Air Roofing's must initially carry out Air Roofing's Health & Safety induction course where required before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by Air Roofing.

12. Underground Locations

- 12.1 Prior to Air Roofing commencing any work the Client must advise Air Roofing of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 12.2 Whilst Air Roofing will take all care to avoid damage to any underground services the Client agrees to indemnify Air Roofing in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Compliance with Laws

- 13.1 The Client and Air Roofing 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, including any occupational health and safety laws (OHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 13.2 Both parties acknowledge and agree:
 - (a) to comply with the National Construction Code of Australia (NCC) and the Home Building Contracts Act 1991, in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.

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- 13.3 Where the Client has supplied products for Air Roofing to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in Air Roofing's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then Air Roofing shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works, unless otherwise specifically included in the scope of Works.

14. Modern Slavery

- 14.1 For the purposes of this clause:
- (a) “**Act**” means the *Modern Slavery Act 2018 (cth)*
 - (b) “**Modern Slavery**”, “**Modern Slavery Statement**” and “**Reporting Entity**” have the meanings given by the Act.
- 14.2 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 14.3 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
 - (d) provide to Air Roofing a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of Air Roofing's request (or such longer period as Air Roofing agrees), provide to Air Roofing any information or assistance reasonable requested by Air Roofing;
 - (i) concerning the Client's compliance with the Act;
 - (ii) concerning the Client's operations and supply chains;
 - (iii) to enable Air Roofing to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable Air Roofing to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 14.4 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and Air Roofing will be able to terminate the Contract for any breach by the Client.
- 14.5 The Client warrants that any information supplied to Air Roofing is true and accurate and may be relied upon for the purposes of the Act.
- 14.6 The Client shall indemnify Air Roofing against any loss or liability suffered by Air Roofing as a result of the Client's breach of this clause 14.

15. Title

- 15.1 Air Roofing and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Air Roofing all amounts owing to Air Roofing; and
 - (b) the Client has met all of its other obligations to Air Roofing.
- 15.2 Receipt by Air Roofing 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.
- 15.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 15.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Air Roofing on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Air Roofing and must pay to Air Roofing 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 Air Roofing shall be sufficient evidence of Air Roofing's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Air Roofing 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 Air Roofing and must pay or deliver the proceeds to Air Roofing 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 Air Roofing and must sell, dispose of or return the resulting product to Air Roofing as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Air Roofing to enter any premises where Air Roofing believes the Materials are kept and recover possession of the Materials;
 - (g) Air Roofing 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 Air Roofing;
 - (i) Air Roofing may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

16. Personal Property Securities Act 2009 (“PPSA”)

- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 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 and/or collateral (account) – being a monetary obligation of the Client to Air Roofing for Works – that have previously been supplied and that will be supplied in the future by Air Roofing to the Client.
- 16.3 The Client undertakes to:

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- (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 Air Roofing 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 16.3(a)(i) or 16.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Air Roofing 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 Air Roofing;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Air Roofing;
 - (e) immediately advise Air Roofing 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.
- 16.4 Air Roofing 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.
- 16.5 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.
- 16.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by Air Roofing, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Client shall unconditionally ratify any actions taken by Air Roofing under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17. Security and Charge**
- 17.1 In consideration of Air Roofing 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, and the Client grants a security interest in all of its present and after-acquired property, 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).
- 17.2 The Client indemnifies Air Roofing from and against all Air Roofing's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Air Roofing's rights under this clause.
- 17.3 The Client irrevocably appoints Air Roofing and each director of Air Roofing as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.
- 18. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 18.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seventy-two (72) hours of delivery notify Air Roofing 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 Air Roofing to inspect the Materials or to review the Works provided.
- 18.2 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**).
- 18.3 Air Roofing acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Air Roofing makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Air Roofing's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Client is a consumer within the meaning of the CCA, Air Roofing's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If Air Roofing is required to replace any Materials under this clause or the CCA, but is unable to do so, Air Roofing may refund any money the Client has paid for the Materials.
- 18.7 If Air Roofing 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 Air Roofing 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.
- 18.8 If the Client is not a consumer within the meaning of the CCA, Air Roofing's 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 Air Roofing at Air Roofing's sole discretion;
 - (b) limited to any warranty to which Air Roofing is entitled, if Air Roofing did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 18.9 Subject to this clause 18, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 18.1; and
 - (b) Air Roofing 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.
- 18.10 Notwithstanding clauses 18.1 to 18.9 but subject to the CCA, Air Roofing 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;

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- (d) interference with the Works by the Client or any third party without Air Roofing's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by Air Roofing;
 - (f) fair wear and tear, any accident, or act of God.
- 18.11 In the case of second-hand Material, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Air Roofing as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Air Roofing has agreed to provide the Client with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 18.11.
- 18.12 Air Roofing may in its absolute discretion accept non-defective Materials for return in which case Air Roofing may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.

19. Intellectual Property

- 19.1 Where Air Roofing has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Air Roofing, and shall only be used by the Client at Air Roofing's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Air Roofing.
- 19.2 The Client warrants that all designs, specifications or instructions given to Air Roofing will not cause Air Roofing to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Air Roofing against any action taken by a third party against Air Roofing in respect of any such infringement.
- 19.3 The Client agrees that Air Roofing may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Air Roofing has created for the Client.

20. Default and Consequences of Default

- 20.1 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 Air Roofing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes Air Roofing any money, the Client shall indemnify Air Roofing from and against all costs and disbursements:
(a) incurred; and/or
(b) which would be incurred and/or
(c) for which by the Client would be liable;
in regard to legal costs on a solicitor and own client basis, internal administration fees, Air Roofing's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 20.3 Further to any other rights or remedies Air Roofing may have under this Contract, if a Client has made payment to Air Roofing, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Air Roofing under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to Air Roofing's other remedies at law Air Roofing shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Air Roofing shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Air Roofing becomes overdue, or in Air Roofing's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by Air Roofing;
(c) 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
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

- 21.1 Without prejudice to any other remedies Air Roofing may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Air Roofing may suspend or terminate the supply of Works to the Client. Air Roofing will not be liable to the Client for any loss or damage the Client suffers because Air Roofing has exercised its rights under this clause.
- 21.2 Air Roofing 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 Air Roofing shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Air Roofing for Works already performed. Air Roofing shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 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 Air Roofing as a direct result of the cancellation (including, but not limited to, any loss of profits).

22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by Air Roofing is Personal Information, as defined and referred to in clause 22.3, and therefore considered Confidential Information. Air Roofing acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Air Roofing acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Air Roofing that may result in serious harm to the Client, Air Roofing will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

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- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to Air Roofing in respect of Cookies where the Client utilises Air Roofing's website to make enquiries. Air Roofing agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Air Roofing when Air Roofing sends an email to the Client, so Air Roofing may collect and review that information ("collectively Personal Information")
- If the Client consents to Air Roofing's use of Cookies on Air Roofing's website and later wishes to withdraw that consent, the Client may manage and control Air Roofing's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Client agrees for Air Roofing to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Air Roofing.
- 22.4 The Client agrees that Air Roofing may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 22.5 The Client consents to Air Roofing being given a consumer credit report to collect overdue payment on commercial credit.
- 22.6 The Client agrees that personal credit information provided may be used and retained by Air Roofing 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.
- 22.7 Air Roofing 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.
- 22.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 22.3 above;
 - (b) name of the credit provider and that Air Roofing is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided Air Roofing is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Air Roofing has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Air Roofing, 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).
- 22.9 The Client shall have the right to request (by e-mail) from Air Roofing:
- (a) a copy of the Personal Information about the Client retained by Air Roofing and the right to request that Air Roofing correct any incorrect Personal Information; and
 - (b) that Air Roofing does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 22.10 Air Roofing 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 22.11 The Client can make a privacy complaint by contacting Air Roofing via e-mail. Air Roofing 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.
- 23. Unpaid Seller's Rights**
- 23.1 Where the Client has left any item with Air Roofing for repair, modification, exchange or for Air Roofing to perform any other service in relation to the item and Air Roofing has not received or been tendered the whole of any monies owing to it by the Client, Air Roofing shall have, until all monies owing to Air Roofing are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 23.2 The lien of Air Roofing shall continue despite the commencement of proceedings, or judgment for any monies owing to Air Roofing having been obtained against the Client.
- 24. Service of Notices**
- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:

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- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**
- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Air Roofing may have notice of the Trust, the Client covenants with Air Roofing as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Air Roofing (Air Roofing will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 26. Construction Contracts Act 2004**
- 26.1 At Air Roofing's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Construction Contracts Act 2004 may apply.
- 26.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.
- 27. General**
- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the Perth Courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 27.4 Subject to clause 18, Air Roofing 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 Air Roofing of these terms and conditions (alternatively Air Roofing's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 Air Roofing may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.6 The Client cannot licence or assign without the written approval of Air Roofing.
- 27.7 Air Roofing may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Air Roofing's sub-contractors without the authority of Air Roofing.
- 27.8 The Client agrees that Air Roofing may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Air Roofing to provide Works to the Client.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 27.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.