

WEATHERPROOF RESTORATIONS PTY LTD – Terms & Conditions

1. Definitions

- 1.1 “Company” shall mean WeatherpRoof Restorations Pty Ltd (ACN 635 585 250), its subsidiaries and its successors and assigns.
- 1.2 “Customer” shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 “Services” shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods).
- 1.6 “Price” shall mean the cost of the Goods and Services as agreed between the Company and the Customer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Company from the Customer for the supply of Goods or Services and/or the Customer’s acceptance of Goods or Services supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Company.
- 2.4 None of the Company’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.

3. Goods and Services

- 3.1 The Goods and/or Services are as described on the invoices, quotation, authority to hire or any other work commencement forms as provided by the Company to the Customer.

4. Price And Payment

- 4.1 At the Company’s sole discretion, the Price shall be either;
- (a) as indicated on invoices provided by the Company to the Customer in respect of Goods and/or Services supplied; or
- (b) the Company’s current Price, at the date of delivery of the Goods and/or Services, according to the Company’s current Price list; or
- (c) be the Company’s quoted Price (subject to clause 4.2) which shall be binding upon the Company unless the Customer rejects in writing the Company’s quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Company’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Company’s sole discretion, a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the

order of the Goods and shall become immediately due and payable.

4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated, then payment shall be on delivery of the Goods.

4.5 The Company may withhold delivery of the Goods and/or Services until the Customer has paid for them, in which event payment shall be made before the delivery date.

4.6 At the Company’s sole discretion, payment for approved Customers shall be made by installments in accordance with the Company’s written delivery/payment schedule.

4.7 At the Company’s sole discretion, payment for approved Customer’s shall be due on thirty (30) days following the end of the month in which a statement is delivered to the Customer’s address or address for notices.

4.8 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Company.

4.9 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.

5. Delivery Of Goods / Services

5.1 Delivery of the Goods and/or Services shall be made to/at the Customer’s nominated address. The Customer shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery, or delivery of the Goods and shall be made to the Customer at the Company’s address.

5.2 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.

5.3 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods and/or Services (or any of them) promptly or at all.

5.4 The Company does not accept any responsibility for loss or breakage of Goods in transit.

6. Risk

6.1 The Company always retains property and title in the Goods until payment is made, nonetheless, all risk for the Goods passes to the Customer on delivery.

6.2 The Customer acknowledges that they are liable for any loss or damage to the Goods from the time of delivery until it is returned to or picked up by the Company.

6.3 The Customer will insure, or self-insure, the Company’s interest in the Goods against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Goods. Further the Customer will not use the Goods nor permit it to be used in such a manner as would permit an insurer to decline any claim.

6.4 The Customer shall keep the Company indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses.

7. Customer’s Disclaimer

7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or

agent of the Company and the Customer acknowledges that it buys the Goods relying solely upon its own skill and judgement and that the Company shall not be bound by, nor responsible for, any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

7.2 The Customer indemnifies the Company against the destruction or loss of the Goods by any means or for any reason whatsoever, including lawful confiscation.

8. Cancellation

8.1 The Company may cancel these terms and conditions or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

8.2 The Customer must give fourteen (14) days’ notice to the Company of any cancellation of any delivery or order failing which the Company is at liberty to charge the Customer for the Price of the Goods and/or Services.

9. Warranty

9.1 The Company warrants that the Goods supplied shall be of merchantable quality. The Company does not warrant that the Goods are fit for a particular purpose and, except or unless otherwise stated in these terms and conditions, warranties relating to title, defects or conformity of the Goods are expressly excluded. Any costs associated with the return of the Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

9.2 The Company does not make any warranty as to the spraying of galvanise material which may become patchy as a result of the chemical components in the galvanise. The Company will make its best efforts to ensure this does not occur.

10. Defects

10.1 The Customer shall inspect the Goods upon delivery and notify the Company in writing within twenty-four (24) hours of any defects, short deliveries or any failure to fulfill any quotation or order.

10.2 The Company will within a reasonable period following delivery be given access to the Goods in order to inspect for any alleged defects. Should the Customer fail to notify the Company in writing within twenty four (24) hours of any alleged defect, short-delivery or failure to fulfill any quotation or order, then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

10.3 Visible damage to the Goods must be reported to and claimed on the Customer’s insurance policy.

10.4 In the event that no written notification is received by the Company from the Customer within twenty-four (24) hours of delivery of the Goods, the Goods are taken to be fit for their purpose and no other

11. Fair Trading Acts

11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth *Trade Practices Act 1974*, the *Sale of Goods Act 1896*, the *Competition and Consumer Act 2010*, the *Consumer Protection Rules 1987* or the Fair Trading Acts in each of the States and Territories

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of Australia, except to the extent permitted by those Acts where applicable.

12. Default & Consequences of Default

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due, daily until the date of payment, at a rate of 2.5% compounding per calendar month. The Customer agrees that that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non-payment by the Customer. Interest will be calculated on all outstanding amounts from the date of issue of the invoice.

12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's costs and disbursements, including legal costs on an indemnity basis or on a solicitor and own client basis whichever is the higher and in addition all of the Company's nominees costs of collection inclusive of debt collection and agency fees and commissions.

12.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.

12.4 In the event that:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, 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 Customer or any asset of the Customer;

then without prejudice to the Company's other remedies at law

- (i) the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Company shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.
- (iii) Outstanding monies shall be recoverable forthwith from the Customer as a liquidated debt together with any interest accrued and costs.

13. Title

13.1 The Goods will at all times remain the absolute property of the Company and title does not pass to the Customer at any stage.

14. Security And Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:

- (a) Where the Customer and/or the Guarantor (if any) is the Company of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty

or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

- (b) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on an indemnity basis or a solicitor and own client basis whichever is the higher.
- (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Company and/or the Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Company and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15 PPSA

15.1 This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law").

15.2 References to PPS Law in this Agreement include references to amended, replacement and successor provisions.

15.3 The Company may register its security interest as a PMSI. The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:(a) ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;(b) enabling the Company to gain first priority (or any other priority agreed to be the Company in writing) for its security interest; and(c) enabling the Company to exercise rights in connection with the security interest.

15.4 The Company may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.

15.5 The rights of the Company under this document are in addition to and not in substitution for the Company's rights under other law (including PPS Law) and the Company may choose whether to exercise rights under this document, and/or under other law, as it sees fit.

15.6 To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply

and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied:

- (a) section 95 (notice of removal of accession to the extent it requires the Company to give notice to the Renter);
- (b) section 96 (retention of accession);
- (c) section 121(4) (notice to grantor);
- (d) section 125 (obligations to dispose of or retain collateral);
- (e) section 130 (notice of disposal to the extent it requires the Company to give notice to the Renter);
- (f) section 129(2) and 129(3);
- (g) section 132(3)(d) (contents of statement of account after disposal);
- (h) section 132(4) (statement of account if no disposal);
- (i) section 135 (notice of retention);
- (j) section 142 (redemption of collateral); and
- (k) section 143 (reinstatement of security agreement).

15.7 The following provisions of the PPS Law confer rights on the Company:

- (a) section 123 (seizing collateral);
- (b) section 126 (apparent possession);
- (c) section 128 (secured party may dispose of collateral);
- (d) section 129 (disposal by purchase); and
- (e) section 134(1) (retention of collateral).

15.8 The Customer agrees that in addition to those rights, the Company shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of the Goods, (including entering upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are or may be located), not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that the Company may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence without being responsible for any damage thereby caused.

15.9 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

15.10 The Company and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The Agreement in this sub-clause is made solely for the purposes of allowing the Company the benefit of section 275(6)(a) and the Company shall not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.

16 Security interests and sub-hire

16.1 The Customer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Goods other than with the express written consent of the Company.

16.2 The Customer must not lease, hire, bail or give possession ('sub-hire') of the Goods to anyone else unless the Company (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Company and must be expressed to be subject to the rights of the Company under this Agreement. The Customer may not vary a sub-hire without the prior written consent of the Company (in its

absolute discretion).

16.3 The Customer must ensure that the Company is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hiree, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Goods.

16.4 The Customer must take all steps including registration under PPS Law as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;

- (b) enabling the Customer to gain (subject always to the rights of the Company) first priority (or any other priority agreed to by the Company in writing) for the security interest; and

- (c) enabling the Company and Customer to exercise their respective rights in connection with the security interest.

16.5 The Company may recover from the Customer the cost of doing anything under this clause, including registration fees.

17 Privacy Act 1988

17.1 The Customer and/or the Guarantor/s agree for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.

17.2 The Customer and/or the Guarantor/s agree that the Company may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by the Customer;
- (b) To notify other credit providers of a default by the Customer;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
- (d) To assess the credit worthiness of the Customer and/or Guarantor/s.

17.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

17.4 The Customer agrees that personal data provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed in writing between the Customer and Company or required by law from time to time:

- (a) provision of Services & Goods;
- (b) marketing of Services and/or Goods by the Company, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.

17.5 The Company may give, information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

18. General

18.1 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.

18.2 All Goods supplied by the Company are subject to the laws of Queensland and the Company takes no responsibility for changes in the law which affect the Goods supplied. The Customer irrevocably submits to the jurisdiction of Queensland and the Brisbane Registry of the appropriate Court or Tribunal in the event of any dispute.

18.3 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.

18.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.

18.5 The Customer shall not set off, deduct or reduce against the Price, any amounts due from the Company.

18.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

18.7 The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.

18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.