



STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

TEN-FRM-12 (AUS)

Revision Date: 28 Jun 2017

1. Definitions and Interpretation

In these Conditions and elsewhere in the Contract unless a contrary intention appears the following shall mean:

Anti-Bribery and Anti-Corruption Legislation includes any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of RCR and the Client) including but not limited to the *Criminal Code Act 1995* (Cth), the *Crimes Act 1914* (Cth), the *Financial Management and Accountability Act 1997* (Cth), the *Commonwealth Authorities and Companies Act 1997* (Cth), the *Corporations Act 2001* (Cth) and the *Bribery Act 2010* (UK).

Client means the person or corporation set out in Item 2 of the Contract Particulars and/or RCR Invoice which is the buyer of the Goods.

Completion Date means the date specified in Item 7 of the Contract Particulars, or any extension thereof agreed in writing between the parties, on which RCR must deliver the Goods.

Conditions mean these standard RCR terms and conditions.

Contract means the agreement between the Client and RCR evidenced by the Conditions, the Contract Particulars and/or RCR Invoice, and all other documents which are listed in Item 9, of the Contract Particulars or incorporated by written reference into the Contract by RCR.

Contract Price means the total price submitted by RCR either as a lump sum fixed price, schedule of rates, cost plus or a combination of these as detailed in item 4 of the Contract Particulars.

Force Majeure means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather conditions, industrial disputes (except where restricted to employees of RCR), sabotage or commotion, act or omission of the Client, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of RCR.

Goods means the goods, products, materials or equipment supplied by RCR in accordance with this Contract including as specified in Item 3 of the Contract Particulars and/or RCR Invoice.

Information means documents, data, methods, material, preliminary design, specific requirements, specifications, calculations, test results and any other information provided to RCR by the Client before or during execution of the Contract.

Insolvency Event means circumstances under which a party:

- has a receiver or similar officer appointed over all or a substantial part of its assets or undertaking;
- passes a resolution for winding-up (other than a winding-up for the purpose of, or in connection with, any solvent amalgamation or reconstruction) or a court makes an order to that effect or a court makes an order for administration (or any equivalent order in any jurisdiction);
- ceases to carry on business; or
- is unable to pay its debts as they become due in the ordinary course of business.

Intellectual Property means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method or confidential information.

PPSA means the Personal Property Securities Act 2009 (Cth).

RCR means the subsidiary of RCR Tomlinson Ltd (ACN 008 898 486) described in Item 1 of the Contract Particulars or if no

description has been provided, the entity named in the RCR Invoice.

RCR Invoice means an invoice setting out the Goods supplied to the Client by RCR and claiming payment for the supply of those Goods.

Works means the scope of works being tendered for as detailed in the Contract, which is inclusive of the Goods.

2. General

2.1 The Client has requested that RCR supply the Goods and RCR agrees to supply the Goods in accordance with the Contract.

2.2 These conditions (which can only be waived in writing and signed by an authorised representative of RCR) prevail over all conditions of the Client's order or other documents.

2.3 If additional terms and/or conditions are attached to, incorporated into or accompany the Client's order, those terms and/or conditions are not accepted by RCR and do not form part of the Contract unless expressly accepted in writing and signed by an authorised representative of RCR.

2.4 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

3. Deemed Acceptance

In the absence of a written acknowledgement from the Client, the supply of the Goods to the Client will be deemed acceptance of the Contract.

4. Price

4.1 The Client shall pay RCR for the Goods in accordance with the Contract Price and time for payment listed in Item 4 of the Contract Particulars and/or RCR Invoice.

4.2 Unless otherwise stated, the price quoted by RCR is net and exclusive of Goods and Services Tax (GST) and any other relevant taxes of any nature whatsoever, together with penalties, fines or interest thereon.

5. Payment

5.1 Except as otherwise agreed by RCR in writing, the Client, shall pay all invoiced amounts in Australian dollars, without right of set off, within thirty (30) days from the date of RCR Invoice.

5.2 If the Client fails to pay RCR the full amount stated in the RCR Invoice in accordance with this clause, then RCR will charge interest on the amount unpaid by the Client at a rate of 2% over RCR's commercial bank overdraft rate.

6. Standard to Conform to Specifications

RCR shall supply the Goods in accordance with the specifications, drawings, samples or other description (if any) furnished by the Client and contained in Item 9 of the Contract Particulars.

7. Information and Documents

The Client will provide all Information including answers to any questions that RCR may ask, to enable RCR to supply the Goods. The Client shall be responsible for and confirms the completeness and accuracy of all Information provided to RCR. RCR will not check or review any Information provided by the Client. RCR will be entitled to claim an extension of time and any costs incurred as a result of any delay in provision of Information by the Client or others to RCR or as a result of any Information being inaccurate.

8. Warranty

RCR warrants that:



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- (a) the Goods will be of merchantable quality and be free from substantial defect in workmanship;
- (b) any Goods manufactured or fabricated by RCR will be performed to the standard agreed by the parties and as set out in Items 3 and 9 of the Contract Particulars.

9. Defects Liability

- 9.1 The defects liability period will commence from the Completion Date or upon issue of the certificate of practical completion for the Works, whichever is earlier, and shall continue for the period stated specified in item 6 of the Contract Particulars, or if no period is stated, for a period of 3 months from delivery of the Goods. Any additional warranty provided by a manufacturer of Goods which RCR has supplied will be passed on to the Client on agreement with the manufacturer.
- 9.2 During the defects liability period, RCR will make good or replace (as the case may be) defective Goods excluding:
 - (a) any interfacing between the Client's equipment, Site, plant or design (unless expressly included as part of the Works and listed in the Contract);
 - (b) ordinary wear and tear; and
 - (c) any damage which has been caused or contributed by the Client's negligence or acts or omissions.
- 9.3 If the Client finds a defect with the Goods the Client must notify RCR in writing of the defect within seven (7) days of discovery of the defect and must take all reasonable actions to prevent further damage.
- 9.4 RCR will be responsible for the costs of actual rectification/replacement works only, and any associated costs (including removal or transportation costs) shall be borne by the Client.
- 9.5 If RCR uses a subcontractor or supplier or other person to perform any work under the Contract (Other Person), any work, labour and services carried out by the Other Person shall only be warranted by RCR to the degree that the Other Person indemnifies RCR.

10. Delivery of Goods, Title and Risk

- 10.1 RCR will deliver the Goods on the date as set out in Item 7 of the Contract Particulars to the place nominated in Item 8 of the Contract Particulars.
- 10.2 On the Client's receipt of the Goods, all risk relating to the Goods passes to the Client. However, if the Client provides any components to RCR for inclusion in the Goods the risk of those components remains with the Client at all times. RCR will use all reasonable care to provide suitable storage of the Client's components but will not be liable for any loss or damage.
- 10.3 It is acknowledged by the Client that RCR fulfils all of its obligations under the Contract once the Goods are delivered by RCR or collected by the Client, whichever the earlier.
- 10.4 Title in the Goods remains with RCR until all sums due and owing by the Client to RCR are paid in full notwithstanding the delivery, receipt, collection or passing of risk to the Client.
- 10.5 Until title of the Goods passes, RCR reserves and retains the following rights in relation to the Goods until all accounts owed by the Client to RCR are fully paid:
 - (a) to enter the Client's premises, or the premises of any associated entity or agent of the Client where the Goods are located, without liability for trespass or any resulting damage and retake possession of the Goods; and

- (b) to keep or resell the Goods repossessed under this clause.

11. Personal Properties Security Act

- 11.1 In this clause 11 words and expressions which are not defined in these Conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.
- 11.2 The Client acknowledges that RCR has a purchase money security interest in the Goods including, but not limited to, where the Client has not paid for the Goods in full prior to delivery.
- 11.3 The Client acknowledges that if RCR has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.
- 11.4 RCR may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as RCR determines in its absolute discretion). The Client must provide RCR with any information it requires for the purposes of giving effect to such registration.
- 11.5 For the purposes of section 157(3) of the PPSA, the Client irrevocably and unconditionally waives its right to receive any notice from RCR in connection with the registration of a financing statement or a financing change statement in respect of the Goods.
- 11.6 If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.
- 11.7 The Client must take any steps (including provide information) RCR reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.
- 11.8 Neither the Client nor RCR will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 11.9 Until RCR's security interest (whether perfected or not) is satisfied, the Client agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Client breaches this subclause, the Client shall indemnify RCR for any cost, expense, loss or damage suffered.

12. Intellectual Property

- 12.1 RCR retains all intellectual property and ownership rights of such in any Intellectual Property and other information relating to the Works which is created or modified by RCR during the Contract.
- 12.2 RCR hereby grants to the Client a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by RCR, for the purpose of or in connection with the Contract.
- 12.3 The Client acknowledges that RCR will not be responsible for any infringement of any intellectual property of the Client that the Client has in any components, material or additional documents and RCR will not be liable for any claim whatsoever due to RCR's use of the Client's intellectual property.
- 12.4 The Client shall indemnify and hold harmless RCR against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Client to RCR.

13. Insurance



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RCR shall procure and maintain the insurances as specified in Item 10 of the Contract Particulars.

14. Termination

14.1 Either party has the right to terminate this Contract because of any event beyond the reasonable control of either party which alters the ability of the terminating party to fulfil the terms of this Contract.

14.2 Where one party:

- (a) commits a material breach of the Contract which is not capable of being remedied; or
- (b) fails to remedy a breach capable of being remedied within the period stated by notice in writing; or
- (c) is subject to an Insolvency Event,

the other party may terminate this Contract in whole or in part with immediate effect by providing written notice to the defaulting party.

14.3 If RCR terminates this Contract, the Client agrees and acknowledges that it will not prosecute any claim in law or in equity against RCR. The Client agrees if the Client terminates this Contract, it will pay to RCR all outstanding RCR Invoices and for all Goods provided to the Client up to the date of cancellation and the Client indemnifies RCR against any losses incurred by RCR as a result of the termination.

15. Limitation of Liability

Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total liability of RCR to the Client arising out of or in connection with the Contract for all loss, damage, cost or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than fifty percent (50%) of the Contract Price.

16. Consequential Loss

Notwithstanding any other provision of the Contract and to the full extent permitted at law, neither party is liable for any indirect, special, contingent or consequential type losses or damages which includes but is not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.

17. Delays

17.1 The Client shall reimburse RCR all reasonable costs including but not limited to overheads incurred by RCR for any delays except for delays caused by RCR itself.

17.2 If RCR does not deliver the Goods by the Completion Date RCR will pay to the Client as full and final remedy for delay, damages at the rate of 0.1% of the Contract Price per day to a maximum of 5% of the Contract Price in the aggregate. The Client agrees such damages are a genuine and reasonable pre-estimate of loss for delay arising out of the Contract.

18. Company's Quotations and Performance

18.1 RCR's quotations shall be valid for the period stated in Item 5 of the Contract Particulars. Where no period is stated in Item 5, then the quotation will expire within thirty (30) days after the date of the quotation.

18.2 Any performance figures or performance parameters in Item 3 of the Contract Particulars or otherwise given by RCR are estimates only. RCR is under no liability for Goods not attaining such figures unless those figures are specifically guaranteed in writing by RCR. Any written guarantees are subject to the recognised tolerances and parameters applicable to the figures.

18.3 RCR is not responsible to the Client or any person claiming through the Client for any loss or damage to the Goods in transit or installation or service, caused by any event of any kind or by any person.

19. Confidentiality

19.1 The Client acknowledges and agrees that any information submitted by RCR in its offer which includes pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client. Such information must at all times remain confidential and shall not be disclosed to any third party without RCR's prior written consent.

19.2 If such information is disclosed to a third party with RCR's prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by the confidentiality obligations contained in this Contract.

20. Storage

RCR reserves the right to make a reasonable charge for storage of the Goods or any component of the Client to be used in manufacture or supply of the Goods, if delivery instructions are not provided by the Client within 14 days of a request by RCR.

21. Returned Goods

RCR is not under any duty to accept Goods returned by the Client. If RCR agrees to accept returned Goods from the Client, the Client must return the Goods to RCR at any place directed by RCR and on such other terms as RCR directs.

22. Force Majeure

22.1 If performance by RCR of any obligation under the Contract is prevented, restricted or delayed by Force Majeure then RCR shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 22.2.

22.2 If supply is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.

23. Dispute Resolution

23.1 If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and entitled Dispute Notice ('Dispute Notice').

23.2 Within seven (7) days of receipt of the Dispute Notice representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of the Dispute Notice, the General Manager of each of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

23.3 Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice has first been given



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and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

24. Place of Contract and Governing Jurisdiction

The Contract is governed by the law as stipulated in Item 11 of the Contract Particulars and the parties submit to the non-exclusive jurisdiction of those Courts. If no place is nominated in the Contract Particulars, the jurisdiction and place of contract is Western Australia.

25. Anti-Bribery and Corruption

- 25.1 RCR is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti corruption.
- 25.2 The Client represents and warrants it complies with Anti-Bribery and Anti-Corruption Legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures to be made available to RCR for inspection on demand.
- 25.3 The Client represents and warrants it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.
- 25.4 If the Client becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify RCR in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.
- 25.5 If RCR, acting reasonably, believes the Client has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, RCR must give the Client written notice of such. If the Client, within 30 days of that written notice, fails

to show there is no reasonable basis to conclude a breach has occurred, RCR may terminate the Contract without further notice to the Client.

26. Building Code

- 26.1 Where applicable the Subcontractor must comply with the Building Code under the Fair Work (Building Industry) Act 2012 ("the Code"). Copies of the Code are available at www.fwbc.gov.au/what-building-code.
- 26.2 The Subcontractor shall permit the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to construction sites or places covered by the Code to:
- (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Works the subject of this Contract;
 - (c) interview any person;
 - (d) request a party to this Contract to produce a specified document within a specified period, being not less than 14 days in person, by fax or by post;
- as is necessary to allow validation of its progress in complying with the Code.
- 26.3 The Subcontractor shall not appoint a sub-subcontractor, consultant or supplier in relation to the Works where the appointment would breach a sanction imposed in relation to the Code.
- 26.4 The Subcontractor shall ensure that all sub-sub-contracts impose obligations on the sub-subcontractors equivalent to the obligations under this clause.



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CONTRACT PARTICULARS

Date:

Parties	1	RCR	<i>[Insert name of RCR entity]</i>
		RCR's Representative	Attention: Address: Phone: Fax: Mobile: Email:
	2	Client	<i>[insert name Client entity]</i>
		Client's Representative	Attention: Address: Phone: Fax: Mobile: Email:
Goods	3	Goods	
Price and Payment	4	Contract Price	<i>(total hours sum plus Goods fee plus any other costs)</i>
		Time for Payment	
	5	Time for Acceptance by Client of RCR's Quotation	
	6	Defects Liability Period	[X] months from delivery
	7	Completion Date	
	8	Place for Delivery	
	9	Additional Documents	<i>(For example additional documents may include – List all documents including:</i> <ul style="list-style-type: none"> • <i>schedules</i> • <i>specifications</i> • <i>annexures</i> • <i>drawings</i>)
	10	Insurances	<input type="checkbox"/> workers compensation in accordance with the applicable legislation; <input type="checkbox"/> professional indemnity where relevant; <input type="checkbox"/> product liability of not less than \$10 million per occurrence; <input type="checkbox"/> public liability of not less than \$10 million per occurrence; <input type="checkbox"/> motor vehicle of not less than \$10 million per occurrence.
11	Jurisdiction	<i>(fill in applicable State of Australia)</i>	