

Stone Care and Repairs Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 **'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.
- 1.2 **'SCR'** means Stone Care and Repairs Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Stone Care and Repairs Pty Ltd.
- 1.3 **'Client'** means the persons, entities or any person acting on behalf of and with the authority of the Client requesting SCR to provide the Services 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.
- 1.4 **'Goods'** means all Goods or Services supplied by SCR to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 **'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.
- 1.6 **'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 SCR'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.**
- 1.7 **'Price'** means the Price payable (plus any GST where applicable) for the Goods as agreed between SCR and the Client in accordance with clause 5 below.
- 1.8 **'GST'** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
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 the Goods.
- 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 Goods on credit shall not take effect until the Client has completed a credit application with SCR and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, SCR reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by SCR in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on SCR's own knowledge and experience and shall be accepted without liability on the part of SCR. Where such advice or recommendations are not acted upon then SCR shall require the Client or their agent to authorise commencement of the Services in writing. SCR shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 The Client acknowledges and agrees that any painting and decorating work, and purchasing of tiles (other than SCR's Stock Tiles) shall be the Client's responsibility.
- 2.8 Where SCR quotes to undertake a scope of works in stages in order to incrementally address visible issues, full payment is required for each stage prior to providing a quote for the next stage.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that SCR 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 SCR 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 SCR in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of SCR, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Client shall give SCR 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 SCR as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At SCR's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by SCR to the Client; or
 - (b) SCR's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 SCR reserves the right to change the Price if a variation to SCR's quotation is requested. Any variation from the plan of scheduled Services or specifications, including, but not limited to any variation due to unforeseen circumstances, such as:
 - (a) underlying structural damage; and/or
 - (b) tiles below existing tiles; and/or
 - (c) the Client choosing their own tiles above the tile allowance made in SCR's quote; and/or
 - (d) any third party plumbing or drainage work that may be required; and/or
 - (e) as a result of increases to SCR in the cost of materials and labour, etc will be charged for on the basis of SCR's quotation, and will be detailed in writing, and shown as variations on SCR's invoice. The Client shall be required to respond to any variation submitted by SCR within ten (10) working days. Failure to do so will entitle SCR 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.
- 5.3 The Client acknowledges and accepts that on occasion, circumstances may dictate that SCR immediately complete a variation to protect the Services (and/or Client's property) and will endeavour to verbally notify the Client of such a variation prior to its commencement.
- 5.4 A 50% deposit is required in order to confirm your job in SCR's System, at SCR's sole discretion, a lesser deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by SCR, which may be:
 - (a) on Delivery of the Goods;
 - (b) before Delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with SCR's payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is delivered to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SCR.
- Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and SCR.
- SCR may in its discretion allocate any payment received from the Client towards any invoice that SCR determines and may do so at the time of receipt or at any time afterwards. On any default by the Client SCR may re-allocate any payments previously received and allocated. In the absence of any payment allocation by SCR, payment will be deemed to be allocated in such manner as preserves the maximum value of SCR's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 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 SCR nor to withhold payment of any invoice because part of that invoice is in dispute.
- Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to SCR an amount equal to any GST SCR must pay for any supply by SCR under this or any other agreement for the sale of the Goods. 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.
- Provision of Services**
- Delivery ('Delivery') of the Goods is taken to occur at the time that SCR (or SCR's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- Subject to clause 6.3 it is SCR's responsibility to ensure that the Services start as soon as it is reasonably possible.
- The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that SCR claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond SCR's control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify SCR that the site is ready.
- At SCR's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- SCR may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- Any time specified by SCR for delivery of the Goods is an estimate only and SCR 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that SCR is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then SCR shall be entitled to charge a reasonable fee for redelivery and/or storage.
- Risk**
- Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SCR is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SCR is sufficient evidence of SCR's rights to receive the insurance proceeds without the need for any person dealing with SCR to make further enquiries.
- If the Client requests SCR to leave Goods outside SCR's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- Where the Client has supplied materials for SCR to complete the Services, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. SCR shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), however arising from the use of materials supplied by the Client.
- In the event that during the course of the Services SCR discovers any undisclosed waste and/or hazardous materials then SCR reserves the right to halt all Services and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that SCR agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 5.2 and shall be in addition to the Price. SCR under no circumstances shall undertake the removal of asbestos.
- SCR shall not be held liable for any loss, damages or costs to existing parts or new Goods, however arising or resulting from:
 - (a) any existing structural defects such as any existing wet or dry rot, whether or not the rot was caused by termites, pre-existing water damage, plumbing problems, mould and general deterioration of age of pre-existing parts; or
 - (b) any structural movement as a result of normal settling, seepage, shrinkage or expansion in building or foundations, walls or structural improvements; or
 - (c) work performed by other trades people.
- In the event SCR are requested to remove and/or re-fit a balustrade, SCR does not accept any liability for any dents or scratches sustained, or for any loss or damage caused to the balustrade parts or if the balustrade no longer fits correctly due to either a change in the balcony's dimensions after re-tiling, or if the balustrade fittings have deteriorated to the point where they are unserviceable or where the posts/ fittings have been secured through the slab or fascia board and can only be removed by grinding them off.
- In the event that SCR are requested to keep the balustrades installed and tile around them, the Client acknowledges that the membrane will not be a continuous barrier as per Australian Standards, but will go around the posts. Whilst every care is taken to ensure posts are sealed up as best as possible, SCR shall not be liable for any costs, damages or loss however arising from the balcony posts.
- In the event that SCR are requested to remove a dividing wall between balconies and re-install on a HOB step, SCR does not accept any liability for any holes in rendered walls that are exposed from original fittings when the dividing wall is reinstalled at new height.
- SCR shall take all due care while removing grout from floor and wall joints, and between tiles, however at times this process may cause tiles to chip or break. The Client agrees SCR shall not take any responsibility for such damage caused.
- SCR shall take all due care when lifting old tiles and sheeting from a balcony, however at times this process may cause water damaged ceilings to give way from deterioration. The Client agrees SCR shall not take any responsibility for such damage caused.
- In the event that during the course of the Services, SCR causes minor damage to the plaster below the balcony, SCR will repair this but will not repair any pre-existing water damaged plaster that required replacement prior to SCR's works commencing. Should SCR agree to repair a patch of damaged plaster, SCR's repairs will include removing damaged section, re-sheet, stop-up and sand, and leave plaster ready for Client to paint at their own expense.
- SCR gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond SCR's control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
- The Client acknowledges that:
 - (a) SCR do not source replacement/ matching tiles and that this is the sole obligation of the Client. In the event the Client does not provide replacement tiles, SCR will provide our stock 300x600mm exterior tiles. The Client further agrees that SCR takes no responsibility for differences in size, colour or texture of replacement tiles; and
 - (b) variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by SCR to match colour, shade or grain of product, SCR shall not be liable for any loss, damages or costs however arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final Goods supplied. The Client further agrees that all natural stone products are treated on the understanding that it is a natural product, and whilst SCR always aim for a 60% or better appearance in stone restoration, no guarantee of the result can be provided; and
- Goods supplied may fade or change colour over time, expand, contract or distort as a result of exposure to heat, cold, weather, mark or stain if exposed to certain substances and be damaged or disfigured by impact or scratching. SCR shall not be held liable for any loss, damages, or costs however resulting from any acids, chemical compounds, abrasives or solvents used in the cleaning or installation of any Goods. This is irrespective of whether or not the cleaning is conducted by SCR, the Client, or a third party (provided that it was conducted as a result of the Client's direct request). Hydrochloric acid in particular, should never be used on the surface of any type of tile, natural stone or terrazzo.
- If the Client requests SCR to remove plants from a Planter Box prior to waterproofing, SCR shall not be held liable for any loss or costs associated if plants do not survive the transplant process.
- Dimensions, Plans and Specifications**
- All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless the Client and SCR agree otherwise in writing. SCR shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- The Client acknowledges that SCR are a 'Repairs & Maintenance' Company and not a Builder. As such, the Client agrees that SCR:
 - (a) will repair your balcony surface as best as possible using the existing structure of your house and balcony; and
 - (b) will be governed by the existing structure including, but not limited to, existing framework, drainage, datum points for falls achievable; and
 - (c) takes no responsibility for existing building faults or your balcony not meeting Australian Standards, but works to ensure your balcony is waterproofed and tiled to highest standards possible despite these defects.
- If the giving of an estimate or quotation for the supply of Goods involves SCR estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of SCR's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation. Should the Client require any changes to SCR'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.
- Client's Responsibilities**
- It is the Client's responsibility to:
 - (a) provide SCR with any pertinent information and reasonable knowledge of all matters directly or indirectly affecting the Services; and
 - (b) ensure that all Goods, plant or equipment which SCR is required to install (or to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which SCR based the quotation on and therefore, the Client agrees to indemnify SCR against any costs incurred by SCR in rectifying such errors if required; and
 - (c) notify SCR of any further leaking after the Services have been completed. The warranty shall only cover this if it can be proved that the leak originated from a fault specific to the Goods provided by SCR.
- The Client is also responsible to:
 - (a) have all areas clean and clear to enable scheduled Services to be completed in accordance with the schedule of installation; and
 - (b) remove all existing floor coverings, tacks and staples; and
 - (c) fully disclose any information that may affect SCR's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used or the use of concrete over 25mpa); and
 - (d) ensure the sub-floor is adequately ventilated and is structurally sound; and
 - (e) ensure that the levels of a sub-floor are satisfactory as per clause 8.3. The floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and
 - (f) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by SCR in this regard; and
 - (g) provide adequate dustsheets to protect the Client's furniture and décor. SCR will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Client, until the coatings are dry; and
 - (h) extinguish all naked flames prior to coating including but not limited to pilot lights heaters etc; and
 - (i) supply power to within 8 metres of the project; and
 - (j) ensure there is no traffic on the membrane applied to the surface, until the membrane is fully dried and cured to the manufacturer's specifications. SCR shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause;
 - (k) ensure there is no traffic on the newly tiled surface, until tile adhesive has fully cured to the manufacturer's specifications. SCR shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause;
 - (l) SCR is not insured to remove furniture or fittings and will not do so, nor is SCR licensed to move gas, plumbing or electrical appliances such as air-conditioning units and hot water services.
- The Client is also responsible to fix any cracks in rendered walls surrounding the balcony after SCR's works are completed as exposed walls or cracks left unattended can bypass and compromise SCR's works.
- The Client acknowledges that SCR can only repair water damaged timbers to the area that is exposed when opening the balcony. Should water damage continue on under the house structure beyond SCR's works area, the Client is responsible for repairing these areas if required.
- Access**
- The Client shall ensure that SCR has clear and free access to the work site at all times to enable them to undertake the Services. SCR shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SCR. Further to this, SCR reserves the right to charge the Client a fee, in the event the Services cannot be carried out on the agreed date due to the lack of or restricted access.
- Underground and Underfloor Locations**
- Prior to SCR commencing any work, the Client must advise SCR of the precise location of all underground and underfloor services on the site and clearly mark the same. The underground/ underfloor mains & 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 site.
- Whilst SCR will take all care to avoid damage to any underground/ underfloor services, the Client agrees to indemnify SCR 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 11.1.
- Title**
- SCR and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid SCR all amounts owing to SCR; and
 - (b) the Client has met all of its other obligations to SCR.
- Receipt by SCR 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.
- It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to SCR on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for SCR and must pay to SCR the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client

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- must hold the proceeds of any such act on trust for SCR and must pay or deliver the proceeds to SCR on demand;
- (d) the Client should not convert or process the Goods 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 SCR and must sell, dispose of or return the resulting product to SCR as it so directs;
- (e) the Client irrevocably authorises SCR to enter any premises where SCR believes the Goods are kept and recover possession of the Goods;
- (f) SCR may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SCR;
- (h) SCR may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 13. Personal Property Securities Act 2009 (“PPSA”)**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 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 Goods and/or collateral (account) – being a monetary obligation of the Client to SCR for Services – that have previously been supplied and that will be supplied in the future by SCR to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SCR 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 13.3(a)(i) or 13.3(a)(ii);
- (b) indemnify, and upon demand reimburse, SCR 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 Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of SCR;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of SCR;
- (e) immediately advise SCR of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.4 SCR 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.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by SCR, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by SCR under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of SCR agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies SCR from and against all SCR's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SCR's rights under this clause.
- 14.3 The Client irrevocably appoints SCR and each director of SCR as the Client's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify SCR 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 Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SCR the first right of refusal to inspect the Goods within a reasonable time.
- 15.2 All warranty claims must be approved by SCR before commencement of any work, failure to comply will result in any warranty applicable to the Services becoming void. The warranty shall cease and SCR shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without SCR's consent. In the event that it is agreed between SCR and the Client that a third party shall be engaged to rectify any issue under this warranty then:
- (a) the cost of such rectification shall be limited to a specified amount as agreed between both parties in writing; and
- (b) SCR's only obligation in regards to payment of such an amount shall be to credit the Client's account with the amount agreed.
- 15.3 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**).
- 15.4 SCR acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SCR makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SCR's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.6 If the Client is a consumer within the meaning of the CCA, SCR's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.7 If SCR is required to replace the Goods under this clause or the CCA, but is unable to do so, SCR may refund any money the Client has paid for the Goods.
- 15.8 If the Client is not a consumer within the meaning of the CCA, SCR's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty documentation provided to the Client at the time of sale by SCR at SCR's sole discretion;
- (b) limited to any warranty to which SCR is entitled, if SCR did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
- (b) SCR has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, SCR 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 Goods;
- (b) a detected failure occurring after sand cement topping, tiling, soil topping or back filling, any warranty previously offered will be voided;
- (c) the Client using the Goods for any purpose other than that for which they were designed;
- (d) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (e) the Client failing to follow any instructions or guidelines provided by SCR;
- (f) fair wear and tear, any accident, or act of God.
- 15.11 Notwithstanding anything contained in this clause if SCR is required by a law to accept a return then SCR will only accept a return on the conditions imposed by that law.
- 15.12 In the event that the notice in accordance with clause 15.1 has not been given, and subsequently a defect occurs after sand cement topping, tiling, soil topping or back filling, SCR will not be held responsible for any liability and any warranty previously offered will become void, unless proven otherwise, that the defect is due to the negligence of SCR.
- 16. Intellectual Property**
- 16.1 The Client warrants that all designs, specifications or instructions given to SCR will not cause SCR to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SCR against any action taken by a third party against SCR in respect of any such infringement.
- 16.2 The Client agrees that SCR may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SCR has created for the Client.
- 17. Default and Consequences of Default**
- 17.1 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 SCR's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes SCR any money the Client shall indemnify SCR from and against all costs and disbursements incurred by SCR in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SCR's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies SCR may have under this Contract, if a Client has made payment to SCR, 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 SCR under this clause 17 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.
- 17.4 Without prejudice to SCR's other remedies at law SCR shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SCR shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SCR becomes overdue, or in SCR'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 SCR;
- (c) the Client 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies SCR may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SCR may suspend or terminate the supply of Goods to the Client. SCR will not be liable to the Client for any loss or damage the Client suffers because SCR has exercised its rights under this clause.
- 18.2 SCR may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice SCR shall repay to the Client any money paid by the Client for the Goods. SCR shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by SCR as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Policy**
- 19.1 All emails, documents, images or other recorded information held or used by SCR is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. SCR 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"). SCR acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by SCR that may result in serious harm to the Client, SCR 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.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to SCR in respect of Cookies where the Client utilises SCR's website to make enquiries. SCR 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 SCR when SCR sends an email to the Client, so SCR may collect and review that information ("collectively Personal Information").
- 19.3 If the Client consents to SCR's use of Cookies on SCR's website and later wishes to withdraw that consent, the Client may manage and control SCR's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.4 The Client agrees that personal credit information provided may be used and retained by SCR for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; 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 Goods.
- 19.5 SCR 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.
- 19.6 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
- (b) name of the credit provider and that SCR 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 SCR is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than thirty (30) 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 SCR has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of SCR, 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).
- 19.8 The Client shall have the right to request (by e-mail) from SCR:
- (a) a copy of the Personal Information about the Client retained by SCR and the right to request that SCR correct any incorrect Personal Information; and
- (b) that SCR does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.9 SCR 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.
- 19.10 The Client can make a privacy complaint by contacting SCR via e-mail. SCR 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.
- 20. Unpaid Seller's Rights**
- 20.1 Where the Client has left any item with SCR for repair, modification, exchange or for SCR to perform any other service in relation to the item and SCR has not received or been tendered the whole of any monies owing to it by the Client, SCR shall have, until all monies owing to SCR 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.
- 20.2 The lien of SCR shall continue despite the commencement of proceedings, or judgment for any monies owing to SCR having been obtained against the Client.
- 21. Compliance with Laws**
- 21.1 The Client and SCR shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 21.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 21.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 21.4 All Goods used during the performance of the Services (including but not limited to, use of any grouting compound or waterproofing sealants) shall comply and meet all the specified allowances and tolerance governed by the Australian Standards.
- 22. Building and Construction Industry Security of Payment Act 2002**
- 22.1 At SCR's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (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.
- 23.2 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.
- 24. Trusts**
- 24.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not SCR may have notice of the Trust, the Client covenants with SCR 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 SCR (SCR 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.
- General**
- 25.1 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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which SCR has its principal place of business, and are subject to the jurisdiction of the Courts in Victoria.
- 25.3 Subject to clause 15, SCR 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 SCR of these terms and conditions (alternatively SCR's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 SCR may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of SCR.
- 25.6 SCR may elect to subcontract out any part of the Services 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 SCR's sub-contractors without the authority of SCR.
- 25.7 The Client agrees that SCR 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 SCR to provide Goods to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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), ("Force Majeure") or other event beyond the reasonable control of either party.
- 25.9 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.