

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any credit account application form, quotation, order, invoice, personal/directors guarantee and indemnity or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “EME Roofing” means EME Roofing Pty Ltd ACN 154 716 408, its successors and assigns or any person acting on behalf of and with the authority of EME Roofing.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting EME Roofing to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally;
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally;
 - (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 “Works” means all works or materials provided by EME Roofing to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 “Intended Use” means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.6 “Non-Conforming Building Product” means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.7 “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**” includes 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.
- 1.8 “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 ordering from the 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 ordering Works via the website.**
- 1.9 “Price” means the price payable (plus any GST where applicable) for the Works as agreed between EME Roofing and the Client in accordance with clause 5 below.
- 1.10 “GST” means Goods and Services Tax (GST) 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 this Contract and the terms and conditions herein if the Client places an order for or accepts the provision of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 No provision has been made in the quotation to supply or erect scaffolding to any section of the construction. Should any trade statutory authority insist upon scaffolding for roofing then this is to be supplied and erected by the Client.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the *Electronic Transactions 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 EME Roofing shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by EME Roofing in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by EME Roofing in respect of the Works.
- 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 wilful misconduct of EME Roofing; the Client shall not be entitled to treat this Contract as repudiated nor render this Contract invalid.

4. Change in Control

- 4.1 The Client shall give EME Roofing not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s Personal Information (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 EME Roofing as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At EME Roofing’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by EME Roofing to the Client; or
 - (b) EME Roofing’s Price at the date of provision of the Works, according to EME Roofing’s current pricelist; or
 - (c) EME Roofing’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 seven (7) days.
- 5.2 EME Roofing reserves the right to change the Price (either verbally or in writing):
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

- (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, high winds, limitations to accessing the site, availability of machinery, safety considerations (such as asbestos or other toxic materials), prerequisite work by any third party not being completed or not code compliant, obscured building defects (such as rot) which require remedial work, change of design, etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to EME Roofing in the cost of labour or Materials, which are beyond EME Roofing's control.
- 5.3 Variations will be charged for on the basis of EME Roofing's quotation, and will be detailed in writing, and shown as variations on EME Roofing's invoice. The Client shall be required to respond to any variation submitted by EME Roofing within three (3) working days. Failure to do so will entitle EME Roofing to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At EME Roofing's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by EME Roofing at its sole discretion, which may be:
- (a) on completion of the Works;
- (b) by way of progress payments in accordance with EME Roofing's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed;
- (c) seven (7) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EME Roofing.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and EME Roofing.
- 5.7 EME Roofing may, in its discretion allocate any payment received from the Client towards any invoice that EME Roofing determines and may do so at the time of receipt or at any time afterwards. On any default by the Client, EME Roofing may re-allocate any payments previously received and allocated. In the absence of any payment allocation by EME Roofing, payment will be deemed to be allocated in such manner as preserves the maximum value of EME Roofing's Purchase Money Security Interest (as defined in the *Personal Property Securities Act 2009* (Cth) "**PPSA**") in the Materials.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EME Roofing nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated, the Price does not include GST. In addition to the Price, the Client must pay to EME Roofing an amount equal to any GST and the Client must pay for any provision of Works performed by EME Roofing under this Contract or any other agreement. 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.
- 6. Provision of the Works**
- 6.1 Subject to clause 6.2, it is EME Roofing's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that EME Roofing claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond EME Roofing'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 Works; or
- (c) notify EME Roofing that the site is ready.
- 6.3 EME Roofing may provide the Works in separate instalments in its sole discretion. Each separate instalment shall be invoiced and paid in accordance with the provisions in this Contract.
- 6.4 Any time specified by EME Roofing for provision of the Works is an estimate only and EME Roofing will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that EME Roofing is unable to provide the Works as agreed solely due to any action or inaction of the Client then EME Roofing shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date, and/or for storage of the Materials.
- 7. Risk**
- 7.1 If required, EME Roofing shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works, all risk for the Works shall immediately pass to the Client.
- 7.2 EME Roofing may, at its discretion notify the Client that it requires to store at the site Materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply EME Roofing a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 7.3 The Client warrants that the structure of the premises upon which these Materials are to be installed or erected is sound and will sustain the installation and associated Works, and EME Roofing shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and associated Works.
- 7.4 Where the Client is to supply EME Roofing with any design specifications (including, but not limited to, measurements, plans, CAD drawings, etc.) the Client shall be responsible for providing accurate information. EME Roofing shall not be liable whatsoever for any errors in the Materials that are caused by incorrect or inaccurate information being supplied by the Client.
- 7.5 The Client acknowledges and agrees that no persons other than those authorised or employed by EME Roofing are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. EME Roofing shall not be liable for any loss, damages, injuries, or costs however arising / resulting from the Client's failure to comply with this clause.
- 7.6 The Client acknowledges and accepts that:

- (a) EME Roofing is only responsible for parts that are replaced by EME Roofing and that in the event that other components/goods, subsequently fail, the Client agrees to indemnify EME Roofing against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and
- (b) EME Roofing's quotation for repairs to existing tile roofs shall be based only on the replacement of damaged tiles and shall not include the replacement of tiles with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of tiles that have slight imperfections but which EME Roofing does not deem to be defective or that will affect the integrity of the roof, then this shall be a variation to the original quotation and clause 5.2 will apply; and
- (c) EME Roofing accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process if part of the Works, where such loss or damage is due to pre-existing faults or leaks; and
- (d) Materials supplied may
 - (i) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time. EME Roofing will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (ii) expand, contract or distort as a result of exposure to heat, cold and weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.

8. Access

- 8.1 The Client shall ensure that EME Roofing has clear and free access to the site at all times to enable them to undertake the Works. EME Roofing 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).

9. Client's Responsibilities and Obligations

- 9.1 It is the responsibility of the Client to, prior to commencement of the Works:
- (a) to ensure any required pre-requisite work to be carried out by other trades will be completed; and
 - (b) to provide and have erected scaffolding and edge protection to enable the Works to be undertaken (where in EME Roofing's opinion it is deemed necessary). It is also agreed that all scaffolding and edge protection erected will comply with industry safety standards (including AS/NZS 4994.1:2009) and that any person erecting it shall be suitably qualified to ensure its safe and proper erection; and
 - (c) for any costs incurred by EME Roofing due to any delay to the Works as a result of the Client's failure to adhere to this clause will be treated as a variation as per clause 5.2(c).
- 9.2 The Client agrees to:
- (a) ensure that the site complies with all the regulations and Acts of Parliament and rules applicable thereto; and
 - (b) carry out all the preparatory work as is necessary prior to the commencement of the Works or delivery of Materials and to ensure that the roof structure and plumbing are in conformity with all regulations and Acts of Parliament and rules applicable thereto and that the rafters and battens are level to receive sheeting and accessories; and
 - (c) provide adequate vehicular access to the site; and
 - (d) warrant the correctness of the details set out in the bill of quantities and/or measurements in quantities, or measurements indicated in the sketch of the roof; and
 - (e) clean up the site on completion of the Works by EME Roofing; and
 - (f) specify at acceptance of the quotation whether arcing or anti condensation blankets are required.
- 9.3 Where ceilings are fitted into buildings prior to sheeting it is the Client's responsibility to provide and fit tarpaulin covers to protect those ceilings. EME Roofing will in such cases, undertake to cover the roof with these tarpaulins should this be necessary during the progress of the roof operation.

10. Compliance with Laws

- 10.1 The Client and EME Roofing shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 10.3 Where the Client has supplied materials for EME Roofing to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. However, if in EME Roofing's opinion, it is believed that the materials supplied will not conform to the state regulations, then EME Roofing shall be entitled, without prejudice, to halt the Works until the appropriate conforming materials are sourced and all costs associated with such a change to the Price or quotation will be invoiced in accordance with clause 5.2.
- 10.4 The Client agrees that all materials supplied by the Client or the Client's third party sub-contractors will:
- (a) be supplied in accordance with all legislative requirements; and
 - (b) be suitable for their inclusion into the Works.
- 10.5 All Materials supplied and fixed by EME Roofing shall be in accordance with the current Standard, Association of Australian Code and appropriate State or Federal legislation regulations and rules. EME Roofing will not accept any liability or give any guarantee where supply or fixing is specified by the Client contrary to this clause.

11. Title

- 11.1 EME Roofing and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid EME Roofing all amounts owing to EME Roofing; and
 - (b) the Client has met all of its other obligations to EME Roofing.
- 11.2 Receipt by EME Roofing of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then EME Roofing's ownership and rights in relation to the Materials, and this agreement, shall continue.

- 11.3 It is further agreed that, until ownership of the Materials passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures, the Client must return the Materials to EME Roofing upon request by EME Roofing.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for EME Roofing and must pay to EME Roofing the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of this Contract by EME Roofing shall be sufficient evidence of EME Roofing's rights to receive the insurance proceeds directly from the Client's insurer without the need to obtain any consent from the Client.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for EME Roofing and must pay or deliver the proceeds to EME Roofing on demand.
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of EME Roofing and must sell, dispose of or return the resulting product to EME Roofing as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises EME Roofing to enter any premises where EME Roofing believes the Materials are kept and recover possession of the Materials.
 - (g) EME Roofing may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of EME Roofing.
 - (i) EME Roofing may commence proceedings to recover the Price notwithstanding that ownership of the Materials has not passed to the Client.

12. Personal Property Securities Act 2009 (PPSA)

- 12.1 In this clause, financing statement, financing change statement, security agreement, and security interest shall all have the meanings given to it by the PPSA.
- 12.2 Upon assenting to this Contract, the Client acknowledges and agrees that the terms and conditions in this Contract constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Materials that have previously been provided and that will be provided in the future by EME Roofing to the Client.
- 12.3 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 EME Roofing may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii) of this Contract;
 - (b) indemnify, and upon demand reimburse, EME Roofing for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of EME Roofing;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of EME Roofing.
- 12.4 EME Roofing and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by this Contract.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by EME Roofing, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by EME Roofing under clauses 12.3 to 12.5 of this Contract.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12 of this Contract), nothing in this Contract is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of EME Roofing agreeing to provide the Works, 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 this Contract (including, but not limited to, the payment of any money).
- 13.2 The Client agrees to indemnify EME Roofing from and against all EME Roofing's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EME Roofing's rights under this clause.
- 13.3 The Client irrevocably appoints EME Roofing and each director of EME Roofing as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document, deed, real property mortgage, bill of sale or consent to any caveat EME Roofing may choose to lodge against any of the real or personal property of the Client in any Land Titles Office in any state or territory of Australia, Personal Property Security Register or other register on the Client's behalf.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 14.1 The Client must inspect all Works on completion and must within seven (7) days of such time notify EME Roofing in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow EME Roofing to inspect/review the Works provided.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions of this Contract ("**Non-Excluded Guarantees**").

- 14.3 EME Roofing acknowledges that nothing in this Contract purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in this Contract or in respect of the Non-Excluded Guarantees, EME Roofing makes no warranties or other representations under this Contract including but not limited to the quality or suitability of the Works. EME Roofing's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, EME Roofing's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 14.6 If EME Roofing is required to rectify, re-provide, or pay the cost of re-providing the Works under this clause or the CCA, but is unable to do so, then EME Roofing may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works which have been provided to the Client and were not defective.
- 14.7 If the Client is not a consumer within the meaning of the CCA, EME Roofing's liability for any defect or damage in the Works is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by EME Roofing at EME Roofing's sole discretion;
 - (b) limited to any warranty to which EME Roofing is entitled, if EME Roofing did not manufacture the Materials; and
 - (c) otherwise negated absolutely.
- 14.8 Notwithstanding clauses 14.1 to 14.7 but subject to the CCA, EME Roofing shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to provide proper maintenance of the Works;
 - (b) the Client using the Works for any purpose other than that for which they were designed;
 - (c) the Client continuing to use the Works after any defect became apparent or should have become apparent to a reasonably prudent client, operator or user;
 - (d) interference with the Works by the Client or any third party without EME Roofing's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by EME Roofing; and
 - (f) fair wear and tear, any accident, or act of God.
- 15. Default and Consequences of Default**
- 15.1 If the Client defaults in making payment to EME Roofing, then without prejudice to EME Roofing's other remedies at law, all amounts owing by the Client to EME Roofing, whether or not due for payment, shall immediately become payable without a demand from EME Roofing.
- 15.2 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 EME Roofing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.3 If the Client owes EME Roofing any money the Client shall indemnify EME Roofing from and against all costs and disbursements incurred by EME Roofing in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EME Roofing's contract default fee, and bank dishonour fees).
- 15.4 Further to any other rights or remedies EME Roofing may have under this Contract, if the Client has made payment to EME Roofing, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by EME Roofing under this clause 15 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.
- 15.5 Without prejudice to EME Roofing's other remedies at law, EME Roofing shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EME Roofing shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EME Roofing becomes overdue, or in EME Roofing's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by EME Roofing;
 - (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, and
- EME Roofing will not be liable to the Client for any loss or damage the Client suffers due to EME Roofing exercising its rights under this clause.
- 15.6 A statement of account issued by EME Roofing is conclusive proof of the Client's indebtedness to EME Roofing.
- 16. Disgorgement**
- 16.1 If EME Roofing, for any reason, is compelled law, authorities, court or otherwise to disgorge any payment, interest or other consideration received from the Client because the same is determined to be void or voidable as a preference, fraudulent conveyance, impermissible set-off or for any other reasons, such indebtedness or part thereof intended to be satisfied by virtue of such payment, interest or other consideration will be revived and continue as if such payment, interest or other consideration had never been received by EME Roofing, and the Client shall be immediately liable to, and will indemnify, defend and hold EME Roofing harmless for, the amount of such payment or interest surrendered or disgorged. This clause shall survive repayment of the Client or any termination of this Contract and the applicability of this Contract between the parties.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies EME Roofing may have, if at any time the Client is in breach of any obligation (including those relating to payment) under this Contract, EME Roofing may suspend or terminate the provision of Works to the Client. EME Roofing will not be liable to the Client for any loss or damage the Client suffers because EME Roofing has exercised its rights under this clause.
- 17.2 EME Roofing may cancel any Works to which this Contract applies or cancel provision of the Works at any time before the Works have commenced by giving written notice to the Client. On giving such notice EME Roofing shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to EME Roofing for Materials already procured. EME Roofing shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels the provision of the Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by EME Roofing as a direct result of the cancellation (including, but not limited to, any loss of profits).

17.4 Cancellation of orders for Materials made to the Client's specifications, or for non-stocklist items, will not be accepted in any event once production has commenced, or an order has been placed.

18. Privacy Policy

18.1 All emails, documents, images or other recorded information held or used by EME Roofing is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. EME Roofing acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the *Privacy Act 1988* ("the *Privacy Act*") including the Part III C of the *Privacy 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"). EME Roofing acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by EME Roofing that may result in serious harm to the Client, EME Roofing will notify the Client in accordance with the *Privacy Act* and/or the GDPR. Any release of such Personal Information must be in accordance with the *Privacy Act* and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to EME Roofing in respect of Cookies where transactions for purchases/orders transpire directly from EME Roofing's website. EME Roofing agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to EME Roofing when EME Roofing sends an email to the Client, so EME Roofing may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via EME Roofing's website.

18.3 The Client agrees for EME Roofing to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by EME Roofing.

18.4 The Client agrees that EME Roofing may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Client;
- (b) to notify other credit providers of a default by the Client;
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

18.5 The Client consents to EME Roofing being given a consumer credit report to collect overdue payment on commercial credit.

18.6 The Client agrees that personal credit information provided may be used and retained by EME Roofing for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Works;
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works;
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Works.

18.7 EME Roofing may give information about the Client to a CRB for the following purposes:

- (a) to obtain a consumer credit report; and/or
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.

18.8 The information given to the CRB may include:

- (a) Personal Information as outlined in 18.3 above;
- (b) name of the credit provider and that EME Roofing is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and EME Roofing has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of EME Roofing, the Client has committed a serious credit infringement; and/or
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

18.9 The Client shall have the right to request (by e-mail) from EME Roofing:

- (a) a copy of the Personal Information about the Client retained by EME Roofing and the right to request that EME Roofing correct any incorrect Personal Information; and
- (b) that EME Roofing does not disclose any Personal Information about the Client for the purpose of direct marketing.

18.10 EME Roofing will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

18.11 The Client can make a privacy complaint by contacting EME Roofing via e-mail. EME Roofing will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In

the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Building and Construction Industry Security of Payments Act 1999

- 19.1 At EME Roofing's sole discretion, if there are any disputes or claims for unpaid Works then the provisions of the *Building and Construction Industry Security of Payments Act 1999* may apply.
- 19.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payments Act 1999* of New South Wales, except to the extent permitted by the *Building and Construction Industry Security of Payments Act 1999* where applicable.

20. Non-disparagement

- 20.1 The Client agrees that it will not at any time after executing this Contract disparage or make comments (including through social media such as Google review, Facebook, Twitter, Instagram, TikTok, Meta and Reddit) which are critical of EME Roofing or EME Roofing's officers, employees, agents in relation to the provision of goods and services and Work performed pursuant to this Contract.
- 20.2 The Client will take all reasonable steps to ensure that its employees and agents will not disparage, or otherwise bring EME Roofing into disrepute or cause negative impacts to EME Roofing's reputation in relation to the provision of goods and services and Work performed pursuant to this Contract.
- 20.3 This clause shall survive and continue to be enforceable after the termination of the Contract. If the Client breaches this clause, EME Roofing is entitled to recover any damages suffered (including to its reputation) due to the comments made by the Client. In such circumstances, the Client agrees to indemnify EME Roofing from and against all costs and disbursements incurred by EME Roofing in pursuing such action against the Client and the Client's employees and agents (including but not limited to legal costs on an indemnity basis).

21. Service of Notices

- 21.1 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; or
 - (e) if sent by email to the other party's last known email address.
- 21.2 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.

22. Trusts

- 22.1 If the Client at any time upon or subsequent to entering into this Contract is acting in the capacity of trustee of any trust (**Trust**) then whether or not EME Roofing may have notice of the Trust, the Client covenants with EME Roofing as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and
 - (c) the Client will not without consent in writing of EME Roofing (EME Roofing will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

23. General

- 23.1 The failure by either party to enforce any provision of this Contract 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 this Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 If there is any existing agreement between the parties (either written or oral), to the extent the terms of the existing agreement are not inconsistent with the terms of this Contract, the terms of this Contract shall be incorporated into the existing agreements between the parties.
- 23.3 If any term of this Contract is in conflict with the terms of any existing agreement between the parties (either written or oral), the terms of this Contract shall override and supersede the existing agreement between the parties.
- 23.4 This Contract and any contract to which they apply shall be governed by the laws of New South Wales, the state in which EME Roofing has its principal place of business, and are subject to the jurisdiction of the courts of New South Wales.
- 23.5 Subject to clause 14, EME Roofing shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by EME Roofing of this Contract (alternatively EME Roofing's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 23.6 EME Roofing may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.7 The Client cannot licence or assign any right under this Contract without prior written approval of EME Roofing.
- 23.8 EME Roofing may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of EME Roofing's sub-contractors without the authority of EME Roofing.
- 23.9 The Client agrees that EME Roofing may amend the terms and conditions of this Contract by providing written notice to the Client. These changes shall be deemed to take effect from the date on which the Client receives the written notice.

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- 23.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.11 Both parties warrant that they have the power and capacity to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent at the time of executing this Contract and that this Contract creates binding and valid legal obligations on them.
- 23.12 References to Client are intended to bind its executors, administrators and permitted transferees.
- 23.13 The Client acknowledges that prior to the execution of this Contract, it has had the opportunity to obtain independent legal advice.
- 23.14 The Client considers the terms pursuant to this Contract to be reasonable and necessary in all the circumstances.
- 23.15 This Contract is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 23.16 This Contract may be executed in a number or counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument. This Contract may be executed electronically and exchanged by electronic mail.