**RPMWA T&C**

**DEFINITIONS OF TERMS AND CONDITIONS**

1.1 "Reliable Property Maintenance WA" refers to RPMWA or any of its agents or employees.

1.2 "Customer" refers to the Customer, any person acting on the Customer's behalf and with the Customer's authority, or any person purchasing products and services from RPMWA.

1.3 The term "goods" refers to:

1.3.1 all Goods of the general description specified on the front of this agreement that are supplied to the Customer by RPMWA; and
1.3.2 all Goods supplied by RPMWA to the Customer; and
1.3.3 all inventory supplied by RPMWA to the Customer; and
1.3.4 all Goods supplied by RPMWA and further identified in any invoice issued by RPMWA to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
1.3.5 all Goods marked as having been supplied by RPMWA or stored by the Customer in a manner that enables them to be identified as having
1.3.6 all of the Customer's current and future acquired Goods on or to which RPMWA has performed work or on which goods or materials supplied or financed by RPMWA have been attached or incorporated
1.3.7 The descriptions above may overlap, but each is distinct and does not limit the others.

1.4 "Goods and Services" shall mean all goods, products, services, and advice provided by RPMWA to the Customer and shall include, without limitation, the manufacture of design templates, the design, polishing, supply, and application of specialist RPMWA and concrete floors (including designer floors, e.g., painted shop floors), walls, retainers, and fences, and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services.

1.5 "Price" means the agreed-upon cost of the Goods and between RPMWA and the Customer, including all disbursements, such as charges paid to others on the Customer's behalf, subject to clause 4 of this contract.

**2. ACCEPTANCE**
2.1 Any instructions received by RPMWA for the supply of Goods and Services from the Customer shall constitute a binding contract and acceptance of the terms and conditions set forth herein.

**3. INFORMATION COLLECTION AND APPLICATION**
3.1 The Customer grants RPMWA permission to collect, retain, and use any information about the Customer for the purposes of assessing the Customer's creditworthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by RPMWA to any third party.

3.2 The Customer grants RPMWA permission to disclose any information obtained to anyone for the purposes specified in clause 3.1.
3.3 Where the Customer is a natural person, the authorities set forth in clauses 3.1 and 3.2 are authorities or consents under the Privacy Act of 1993.

**4. PRICE**
4.1 Where no price is stated in writing or agreed to orally, the Goods and Services are deemed to be sold at the current price at which RPMWA sells such Goods and Services at the time of the contract.
4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that occurs between the date of the contract and delivery of the Goods and Services that is beyond RPMWA's control.

**5. COMPENSATION**
5.1 Payment for Goods and Services must be made in full by the 20th day of the month following the invoice date ("the due date").
5.2 Interest at the rate of 2.5% per month or part month may be charged on any amount owed after the due date.
5.3 Any expenses, disbursements, and legal costs incurred by RPMWA in enforcing any rights under this contract, including reasonable solicitor's fees or debt collection agency fees, shall be borne by the Customer.
5.4 The receipt of a cheque, bill of exchange, or other negotiable instrument does not constitute payment until the negotiable instrument is fully paid.
5.5 A down payment may be required.

**6. EXPECTATION**
6.1 Where RPMWA provides an estimate for Goods and Services:
6.1.1 Unless otherwise agreed, the estimate shall be valid for thirty (30) days from the date of issue; and
6.1.2 The estimate shall be exclusive of goods and services tax unless otherwise stated; and
6.1.3 RPMWA reserves the right to change the estimate due to circumstances beyond its control.
6.2 In the event that additional Goods and Services are required in addition to the estimate, the Customer agrees to pay for the additional cost of such Goods and Services.

**7. RISK**
7.1 The Goods and Services are at RPMWA's risk until they are delivered to the customer (if RPMWA is not installing) or until the work or contract is completed (if RPMWA is installing).
7.2 Delivery of Goods and Services shall be deemed complete when RPMWA delivers the Goods and Services to the Customer directly or when the Goods and Services are delivered to a carrier, courier, or other bailee for transmission to the Customer.

7.3 The time agreed upon for delivery is not an essential term of this contract unless the Customer gives RPMWA written notice that time is of the essence.
7.4 If RPMWA delivers Goods and Services to the Customer in instalments and RPMWA fails to deliver or supply one or more instalments, the Customer does not have the right to cancel the contract but may seek compensation as a severable breach.

**8. AGENCY**
8.1 The Customer authorises RPMWA to contract as principal or agent for the provision of the Goods and Services covered by this contract.
8.2 If RPMWA enters into a contract of the type described in clause 8.1, that contract shall be read with and form part of this agreement, and the Customer agrees to pay any amounts due under that contract.

**9. SECURITY AND TITLE (PERSONAL PROPERTY SECURITIES ACT 1999)**
9.1 Title to any Goods and Services supplied by RPMWA passes to the Customer only after the Customer has made full payment for all Goods and Services supplied by RPMWA as well as all other sums owed to RPMWA on any account whatsoever. RPMWA has a security interest in all Goods and Services until all sums owed to RPMWA by the Customer are paid in full.

9.2 If the Goods and Services are attached, fixed, or incorporated into the Customer's property through any manufacturing or assembly process by the Customer or any third party, title in the Goods and Services shall remain with RPMWA until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall remain with RPMWA until the Customer has made

9.3 The Customer grants RPMWA irrevocable authority to enter any premises occupied by the Customer or on which Goods and Services are located at any reasonable time after the Customer's default or before the Customer's default if RPMWA believes a default is likely, and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. RPMWA accepts no responsibility for any costs, damages, expenses, or losses incurred by the Customer or any third party as a result of this.

action, nor liable in contract, tort, or otherwise, unless such liability cannot be excluded by statute. RPMWA may either resell any repossessed Goods and Services and credit the Customer's account with the nett proceeds of sale (after deducting all repossession, storage, selling, and other costs) or retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as RPMWA reasonably determines for wear and tear, depreciation, obsolescence, loss or profit, and costs.

9.4 If RPMWA retains Goods and Services under clause 9.3, the Customer waives the right to receive notice under section 120 of the Personal Property Securities Act 1999 ("PPSA") and to object under section 121 of the PPSA.
9.5 The following are examples of Customer defaults:
9.5.1 Non-payment of any sum by the due date.

9.5.2 The Customer intimates that it will not pay any sum by the due date.
9.5.3 Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.
9.5.4 Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to RPMWA remains unpaid.
9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer’s assets or a landlord distains against any of the Customer’s assets.
9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
9.5.7 Any material adverse change in the financial position of the Customer.
9.6 If the Credit Repossession Act applies to any transaction between the Customer and RPMWA, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

**10. PAYMENT ALLOCATION**
10.1 RPMWA may in its discretion allocate any payment received from the Customer towards any invoice that RPMWA determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by RPMWA, payment shall be deemed to be allocated in such manner as preserves the maximum value of RPMWA’s purchase money security interest in the Goods and Services.

**11. DISPUTES AND RETURN OF GOODS**
11.1 No claim relating to the Goods and Services will be considered unless made within seven (7) days of delivery.

**12. LIABILITY**
12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon RPMWA which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on RPMWA, liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
12.2 Except as otherwise provided by clause 12.1 RPMWA shall not be liable for:
12.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by RPMWA to the Customer; and
12.2.2 The Customer shall indemnify RPMWA against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of RPMWA or otherwise, brought by any person in connection with any matter, act, omission, or error by RPMWA its agents or employees in connection with the Goods and Services.

**13. WARRANTY**
13.1 Manufacturer’s warranty applies where applicable.
13.2 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Goods and Services except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
**13.3 RPMWA does not provide any warranty that the Goods and Services are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.**

13.3 RCCSNZ does not provide any warranty that the Goods and Services are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

a. commence Work within a certain time frame or by a certain date,
b. carry out and perform the Work diligently and conscientiously, or complete the Work as soon as is reasonably practicable, or
c. complete the Work within a certain time frame or by a certain date, must make a fair and reasonable allowance for delays that are wholly or partially attributable to the Covid-19 global pandemic, including (without limitation):
d. any requirements imposed by statute, regulation or bylaws of central or local Government,
e. the unavailability or shortage of the specified building materials or any products that might be reasonably substituted for them,
f. the unavailability or shortage of sufficiently skilled labour, including subcontractors and consultants, or
g. the unavailability or shortage of reasonably required plant and equipment.

**14. CONSUMER GUARANTEES ACT**
14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from RPMWA for the purposes of a business in terms of section 2 and 43 of that Act.

**15. CIRCUMSTANCES BEYOND RPMWA CONTROL**
15.1 RPMWA shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
15.2 In addition, RPMWA is entitled to charge $100.00 per hour plus GST for any downtime or delay in it being able to perform its obligations, caused by circumstances beyond RPMWA's control.

**16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
16.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for RPMWA agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to RPMWA the payment of any and all monies now or hereafter owed by the Customer to RPMWA and indemnify RPMWA against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

**17. CANCELLATION**
17.1 RPMWA shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods and Services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
17.2 Any cancellation or suspension of this agreement shall not affect RPMWA's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer’s obligations to RPMWA under this contract.

**18. MISCELLANEOUS**
18.1 RPMWA shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
18.2 Failure by RPMWA to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations RPMWA has under this contract.
18.3 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
18.4 The client shall not assign all or any of its rights or obligations under this contract without the written consent of RPMWA.
18.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer, these terms and conditions of trade shall prevail.
18.6 Unless RPMWA elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.

**19. FORCE MAJEURE**
19.1 No claim or liability will arise against Reliable Property Maintenance WA under these Terms or any Order or Quote, if and to the extent that Reliable Property Maintenance WA’s failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of force majeure. “Force majeure” means any event outside the reasonable control of Reliable Property Maintenance WA and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, pandemics, delay in supply of materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

**20. COVID 19**
20.1 Western Australia is currently experiencing unprecedented challenges caused by the Covid-19 global pandemic, which has necessitated some modifications to the standard wording of the contract to cover the resulting delays, labour and materials shortages, and cost increases. The intention of this clause is that the risk of those factors should lie with the Owner unless expressly otherwise agreed. Therefore, notwithstanding any other provision of this contract (and in the event of any inconsistency between that provision and this clause, this clause will prevail):
20.2 Any obligation on Reliable Property Maintenance WA to:
20.3 The Original Contract Price or Estimate of the Total Contract price shall be automatically adjusted for any increase in the costs incurred by Reliable Property Maintenance WA in connection with the Project (including, without limitation, the cost of labour, subcontractors, and materials), which are wholly or partially attributable to the Covid-19 global pandemic, and which would otherwise have the effect of eroding Reliable Property Maintenance WA’s profit margin. It shall be presumed to be impractical for Reliable Property Maintenance WA to resist any cost increases which are wholly or partially attributable to the Covid-19 global pandemic, unless there is irrefutable evidence to the contrary.

20.4 The fact that any delays or cost increases caused by the Covid-19 global pandemic were foreseen or should have been foreseen by Reliable Property Maintenance WA has no bearing on Reliable Property Maintenance WA's entitlement to pass on cost increases or rely on the protection afforded by any Force Majeure or similar provision in the Contract.