

ROC BRESCIA BUILDING GROUP PTY LTD

TRADE SERVICES CONTRACT

ABN 21 153 821 231

Australia

IMPORTANT – ACCEPTANCE AND PRIORITY OF THESE TERMS

These Trade Services Contract Terms (“Terms”) apply nationally throughout Australia to all works, trade services, labour, materials, goods, plant, equipment and other services undertaken, performed, provided or supplied to or for **Roc Brescia Building Group Pty Ltd ABN 21 153 821 231** (“Roc Brescia”).

By commencing any work, attending any site to perform work, supplying or delivering any goods or materials, providing any labour or services, accepting an instruction to perform work, or otherwise commencing performance for or on behalf of Roc Brescia, the Contractor acknowledges and agrees that these Terms form part of its engagement with Roc Brescia and agrees to be bound by them, provided these Terms have been made available to or otherwise incorporated into the engagement in accordance with applicable law.

A formal purchase order, signed subcontract or separate agreement is not required for these Terms to apply.

These Terms are intended to operate as Roc Brescia’s **primary and prevailing trade engagement terms**.

Except to the extent Roc Brescia expressly agrees otherwise in writing, these Terms prevail over any inconsistent or additional term contained in any:

- quotation;
- estimate;
- proposal;
- tender;
- purchase order;
- work order;
- invoice;
- tax invoice;
- statement;
- delivery docket;
- credit application;
- email;
- text message;
- correspondence;
- scope document;
- supplier terms;
- Contractor terms and conditions;
- website terms;
- oral discussion;
- oral representation;

- previous agreement;
- subsequent document exchanged between the parties; or
- other communication or document relating to the Works.

The mere receipt, acceptance, acknowledgement, processing, signing, payment or use by Roc Brescia of any Contractor document does **not** constitute acceptance by Roc Brescia of any term contained in that document that is inconsistent with these Terms.

No additional or inconsistent term proposed by the Contractor will amend, replace or override these Terms unless an authorised representative of Roc Brescia expressly agrees in writing that the specific provision of these Terms is to be amended or overridden.

1. NATIONAL APPLICATION

1.1

These Terms apply to Works performed for Roc Brescia anywhere within **Australia**, including all States and Territories.

1.2

References in these Terms to legislation, regulations, building requirements, safety requirements, licensing requirements or statutory obligations include the legislation and requirements applicable in the State or Territory in which the relevant Works are performed.

1.3

The Contractor is responsible for ensuring that it holds all licences, registrations, permits, qualifications and approvals required in the State or Territory in which the relevant Works are undertaken.

1.4

Where different regulatory requirements apply between Australian jurisdictions, the requirements applicable to the location of the relevant project or Works will apply.

2. DEFINITIONS

2.1 Contractor

Contractor means any individual, company, partnership, subcontractor, trade contractor, supplier, consultant or other person or entity that undertakes, performs, provides or supplies Works to or for Roc Brescia.

2.2 Roc Brescia

Roc Brescia means **Roc Brescia Building Group Pty Ltd ABN 21 153 821 231**, including its authorised representatives.

2.3 Works

Works means all work, labour, construction work, trade services, professional services, consulting services, materials, goods, plant, equipment or other services undertaken, performed, supplied or provided by the Contractor to or for Roc Brescia.

2.4 Site

Site means any property, construction site, premises or other location in Australia at which the Contractor performs or supplies Works in connection with a Roc Brescia project.

2.5 Contract

Contract means these Terms together with any project-specific documents issued or expressly approved by Roc Brescia, subject at all times to the hierarchy and precedence provisions contained in these Terms.

3. APPLICATION AND ACCEPTANCE

3.1 Standing Trade Terms

These Terms constitute Roc Brescia's standing trade engagement terms.

They apply whenever a Contractor performs or supplies Works to or for Roc Brescia where these Terms have been incorporated into the relevant engagement.

3.2 Acceptance by Conduct

The Contractor will be taken to have accepted these Terms upon first:

- (a) commencing or performing any Works;
- (b) attending a Site for the purpose of undertaking Works;
- (c) supplying, manufacturing, delivering or installing Goods or materials;
- (d) providing labour, plant, equipment or services;
- (e) acting upon an instruction from Roc Brescia;
- (f) commencing performance following acceptance by Roc Brescia of the Contractor's quotation or pricing; or
- (g) otherwise commencing performance of an engagement with Roc Brescia.

3.3 No Purchase Order Required

The application or enforceability of these Terms does not depend solely upon Roc Brescia issuing a purchase order, work order or formal subcontract.

3.4 Continuing Application

Unless Roc Brescia agrees otherwise in writing, these Terms apply to each engagement under which the Contractor undertakes Works for Roc Brescia where these Terms have been incorporated into the engagement.

4. HIERARCHY AND PRECEDENCE OF CONTRACT DOCUMENTS

4.1 Highest Priority

Subject to any mandatory law that cannot be excluded or modified, **these Trade Services Contract Terms have the highest contractual priority** between Roc Brescia and the Contractor.

4.2 Order of Precedence

Unless Roc Brescia expressly agrees otherwise in writing, where there is any inconsistency, ambiguity or conflict between documents forming part of an engagement, the following order of precedence applies:

1. **these Trade Services Contract Terms;**
2. any written amendment expressly signed or approved by an authorised representative of Roc Brescia that specifically states that it overrides a provision of these Terms;
3. any project-specific scope of works issued or expressly approved by Roc Brescia;
4. approved drawings, specifications, schedules, engineering documentation and construction documentation;
5. written instructions issued by an authorised Roc Brescia representative;

6. any agreed quotation or pricing document, but only as to the scope and price expressly accepted by Roc Brescia;
7. any purchase order or work order;
8. any other project document; and
9. any Contractor-issued document.

4.3 Contractor Terms Excluded

Any terms or conditions proposed by the Contractor are rejected and do not form part of the Contract unless Roc Brescia expressly accepts those specific terms in writing.

This applies even where the Contractor states that its terms apply by:

- commencement;
- delivery;
- acceptance;
- payment;
- use of Goods;
- signing a delivery docket;
- opening an account;
- accessing its website;
- accepting a quotation; or
- any other form of conduct.

4.4 No Acceptance by Conduct

Roc Brescia does not accept a Contractor's inconsistent terms merely because Roc Brescia:

- receives a quotation;
- places an order;
- requests work;
- allows work to commence;
- receives Goods;
- accepts delivery;
- signs a delivery docket;
- receives an invoice;
- processes an invoice;
- makes payment;
- communicates with the Contractor; or
- continues to engage the Contractor.

4.5 Express Amendment Required

These Terms may only be amended, waived or overridden by a written document issued or expressly approved by an authorised representative of Roc Brescia.

The amendment must clearly identify:

1. the provision of these Terms being amended;
2. the agreed replacement or modification; and
3. the specific engagement or project to which the amendment applies.

A general statement contained in the Contractor's own terms is insufficient.

5. ENTIRE AGREEMENT

5.1

Subject to applicable law, the Contract constitutes the entire agreement between Roc Brescia and the Contractor concerning the relevant Works and supersedes all prior or contemporaneous negotiations, discussions, representations, communications, understandings and proposed terms relating to those Works.

5.2

The Contractor acknowledges that, in entering into or performing an engagement with Roc Brescia, it does not rely upon any representation, promise, statement or assurance that is inconsistent with the Contract.

5.3

No oral representation or conversation will amend the Contract.

5.4

Where an oral Site direction is reasonably necessary for the progress of the Works, that direction does not amend these Terms or authorise an additional payment unless subsequently confirmed or otherwise approved by Roc Brescia in accordance with the Contract.

5.5

Nothing in this clause excludes or limits liability or rights that cannot lawfully be excluded or limited.

6. CONTRACTOR QUOTATIONS

A quotation provided by the Contractor may be accepted by Roc Brescia for the purposes of determining:

- the Contractor's scope;
- the Price;
- rates;
- quantities;
- inclusions;
- exclusions expressly accepted by Roc Brescia; and
- project-specific commercial details.

Acceptance of a quotation does **not** constitute acceptance of the Contractor's standard terms and conditions.

Where the Contractor's quotation includes terms inconsistent with these Terms, the inconsistent terms are excluded unless Roc Brescia expressly accepts them in writing.

7. EMAILS, TEXT MESSAGES AND OTHER COMMUNICATIONS

Emails, text messages and other communications may provide evidence of:

- instructions;

- scope;
- agreed pricing;
- Site arrangements;
- timing;
- Variations; or
- other project-specific matters.

However, no email, text message or other communication will amend or override these Terms merely because it contains inconsistent language.

An amendment to these Terms must satisfy the express amendment requirements set out above.

8. PURCHASE ORDERS

Roc Brescia may issue purchase orders or work orders for administrative, accounting or project-management purposes.

A purchase order is **not a prerequisite** to the formation of an engagement between Roc Brescia and the Contractor.

Where a purchase order is issued, it is to be read subject to these Terms.

Unless the purchase order expressly states otherwise and is authorised by Roc Brescia in accordance with these Terms, it does not amend or replace these Terms.

9. COMPLIANCE WITH LAWS THROUGHOUT AUSTRALIA

The Contractor must comply with all laws applicable to the Works in the relevant Australian jurisdiction, including where applicable:

- building legislation;
- building regulations;
- National Construction Code;
- Australian Standards;
- occupational health and safety or work health and safety legislation;
- workers compensation legislation;
- security of payment legislation;
- electrical, plumbing and trade licensing laws;
- environmental legislation;
- employment and workplace laws;
- taxation requirements;
- privacy legislation;
- labour hire legislation;
- planning requirements; and
- local government requirements.

Where legislation differs between States and Territories, the Contractor must comply with the requirements applying in the jurisdiction in which the relevant Works are undertaken.

10. SECURITY OF PAYMENT

Nothing in these Terms is intended to exclude, restrict, modify or contract out of any right or obligation under applicable security of payment legislation where doing so is prohibited by law.

The applicable security of payment legislation will be the legislation applying to the relevant Works and jurisdiction.

11. GOVERNING LAW AND JURISDICTION

Unless otherwise expressly agreed in writing, each engagement is governed by the laws of the **State or Territory of Australia in which the relevant project or Works are principally located**.

The parties submit to the courts and tribunals having jurisdiction in that State or Territory and any applicable Commonwealth courts.

Nothing in this clause prevents Roc Brescia from exercising a right or pursuing a remedy in another jurisdiction where permitted by law.

12. NATIONAL OPERATION

These Terms are intended to operate consistently across Roc Brescia's Australian operations.

Where a provision of these Terms is inconsistent with a mandatory law applying in a particular State or Territory:

1. the mandatory law prevails to the minimum extent necessary;
2. the affected provision is to be read down where possible;
3. the remainder of the provision continues to operate to the maximum extent permitted by law; and
4. all remaining provisions of these Terms continue in full force.

WEBSITE ACCEPTANCE NOTICE

IMPORTANT NOTICE TO ALL CONTRACTORS, TRADES AND SUPPLIERS

Roc Brescia Building Group Pty Ltd ABN 21 153 821 231 engages contractors, trades and suppliers subject to these Trade Services Contract Terms.

If these Terms have been provided to you, linked in correspondence relating to your engagement, or otherwise incorporated into your engagement, your commencement of any work, supply of any goods or materials, attendance at Site for the purpose of performing work, or provision of any service to Roc Brescia constitutes acceptance of these Terms.

These Terms prevail over inconsistent terms appearing in a Contractor's quotation, invoice, delivery docket, email, supplier terms or other documentation unless Roc Brescia expressly agrees otherwise in writing.

Contractors must review these Terms before commencing Works.

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