



Please post your original application to any of the below addresses

Po Box 280 EMU PLAINS NSW 2750

Po Box 21 GOODNA QLD 4300

Contact us at [debtors@rocla.com.au](mailto:debtors@rocla.com.au)

or 1800 330 104

Rocla Pty Limited ACN 000 032 ABN 31 000 032 191 ('Rocla')  
A member of the Fletcher Building Group

### Application for 30 days Commercial Credit

Office Use Only

Debtor Area No. Region

Credit Limit Approved

Account Number

Date

Type of Business Operation (Tick applicable box, then complete the sections indicated for your selection)

Business | Company | Trust

Partnership & Sole Traders

#### Part 1 Company | Business | Trust | Partnership & Sole Trader

Trading Name:.....

Legal Entity (if different)..... ACN..... ABN.....

Date Business Commenced .....

Business Address.....

Postal Address.....

Telephone (Bus)..... Mobile ..... Facsimile ..... Email.....

#### Part 2

Details of directors, properties, trustees, sole traders

Full name

Residential Address

Date of Birth

.....  
.....  
.....

Has the application or anyone associated with the application been:

Bankrupt or used "Part X" of the Bankruptcy Act? YES  NO

#### Part 2a

Preferred Method of Receiving Invoices & Statements  Post  Email address:.....

Invoices & Statements

Accounts Payable Contact:.....Phone:.....

Fax:.....Email:.....

Accountant's Email

Address:.....

Purchase order number required? YES  NO

#### Part 3 Trade References:

Reference Name

Phone

Account No

1.....

2.....

3.....

**Part 4 Business**

Premises Owned  Rented  Lease

Order value: \$..... Monthly credit request \$ ..... Industry Type: .....

\*NB: The final credit limit or credit amounts available to application is subject to Rocla Pty Ltd determination.

**Part 5.**

1. In this application the term "Customer" means:

- (a) any Sole Trader or Partnership or Company or Trust referred to in Part 1 or 2 of this Application; and
- (b) where the Customer is unincorporated each principal or partner of the Customer or in the case of a Trust the Trustee of the Trust.

2. Should this application be successful and an account is granted, the Customer agrees with Rocla as follows:

- a) to pay any amount due within the month following the month of invoice;
- b) to pay interest, at the current bank overdraft rate paid by Rocla from time to time, calculated monthly on any amount not paid by the due date;
- c) if any amount is not paid by the due date all amounts then owing by the Customer to Rocla become immediately due and payable;
- d) to pay to Rocla all expenses of collection by Rocla of overdue monies and enforcement of the contract on a solicitor and client basis.

3. The Customer agrees that Rocla's General Terms and Conditions and the terms and conditions contained in this application (collectively the **Rocla Terms**) form part of the contract between the Customer and Rocla and the contract does not include any terms or conditions varying or in addition to the Rocla Terms unless such terms and conditions have been expressly agreed in writing by Rocla. No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

4. For the purpose of securing payment to Rocla, the Customer hereby:

**Charge**

4.1 charges all of the Customer's right, title and interest in all present and after acquired real and personal property (including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a charge) in favour of Rocla for all amounts owing by the Customer to Rocla, whether now or in the future (**Secured Monies**);

4.2 authorises and consents to Rocla lodging a caveat or caveats or to registering a financing statement on the Personal Property Securities Register to note Rocla's interests under this clause;

4.3 irrevocably appoints Rocla and any person nominated by Rocla severally as the attorney of the Customer with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) any document to give effect to this security);

**Mortgage**

4.4 charges all of the Customer's right, title and beneficial interest in all present and after acquired real property in favour of Rocla to secure the Secured Monies;

4.5 agrees to deliver to Rocla within seven (7) days of written demand by Rocla a mortgage in registrable form incorporating the covenants contained for the jurisdiction relevant for the mortgage to be registered;

4.6 authorises and consents to Rocla taking all actions necessary to give effect to this security including the lodgment of a caveat upon the title of the Customer's real property;

4.7 irrevocably appoints Rocla and any person nominated by Rocla severally as the attorney of the Customer with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.

**5. Personal Property Securities Act 2009 (Cth) (PPSA)**

5.1 **Security interest.** The Customer grants a security interest in all the Customer's present and after-acquired property to Rocla to secure payment to Rocla.

5.2 **Enforcement costs.** The Customer must pay or reimburse Rocla (on a full indemnity basis), all costs and expenses of Rocla in connection with:

- (a) appointing a Receiver or Receiver and Manager;
- (b) enforcing, exercising or protecting its security interest over this document;
- (c) maintaining, protecting or realising the Collateral; and
- (d) a default by the Customer.

5.3 **Exclusion of PPSA provisions.** To the extent the law permits:

- (a) the contract with Rocla excludes any provisions of the PPSA which may be excluded in Rocla's discretion and which would otherwise confer rights on the Customer;
- (b) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (i) Rocla need not comply with sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), or 135; and
  - (ii) sections 142 and 143 are excluded.
- (b) for the purposes of section 115(7) of the PPSA, Rocla need not comply with sections 132 and 137;
- (c) if the PPSA is amended after the date of this document to permit the Customer and Rocla to agree to not comply with or to exclude other provisions of the PPSA, Rocla may notify the Customer that any of these provisions is excluded, or that Rocla need not comply with any of these provisions, as notified to the Customer by Rocla; and
- (d) the Customer and Rocla must not disclose information of the kind specified in section 275(1) of the PPSA.

5.4 **Exercise of rights by Rocla.** The Customer agrees that where Rocla has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

6. The law of the State or Territory in which this credit application is lodged shall apply to the terms of this application and any proceedings in respect of or any cause of action arising out of this application shall at the option of Rocla be instituted, heard and determined in a court of competent jurisdiction in the capital city of that state and such court shall be deemed to possess territorial jurisdiction to hear and determine such proceedings.

7. The signatories to the application certify that they are authorised to sign this application on behalf of the Customer.

8. The Customer declares that if this application is successful and credit is granted then the credit is to be applied wholly or predominately for business or investment purposes.

**9. Privacy Act 1988 (Cth) (Privacy Act)**

9.1 The Customer acknowledges and agrees that Rocla may collect personal information and credit information about the Customer and its directors, officers, partners and the Guarantors (each a **Relevant Party**) as set out in Rocla's privacy policy and the Rocla Terms.

9.2 The Customer warrants to Rocla that it has obtained the consent of each of the Relevant Parties to the collection, use, and disclosure of their personal information and credit information by Rocla.

10. The Customer acknowledges that it has received, read, understood and accepted the Rocla Terms.

**11. Electronic execution**

Each party consents and agrees that this application may be executed and delivered by an online system using a web-based portal, or by way of email or other electronic means, and in each case it must be considered an original and each party is legally bound by it as if the application was delivered as an original document with original signatures.

To be signed by Principals/Directors/Authorised officer			
Signature	Print Name	Job Title	Drivers Licence No.

1.....

2.....

3.....

Date:...../...../..... Note: If you do not understand this document you should seek independent advice.

**Part 7**

Rocla Pty Limited ACN 000 032 191 ABN 31 000 032 191 A member of the **Fletcher Building Group**



**GUARANTEE, INDEMNITY AND CHARGE**

Deed of Guarantee & Indemnity made this ..... day of ..... Year .....

**BETWEEN:**

(1) (Names & Addresses of Guarantors)

.....  
..  
.....  
..  
.....  
..  
.....  
..  
.....  
..

(the "Guarantor")

(2) Rocla Pty Limited ABN 31 000 032 191 ("Rocla")

**RECITALS**

A. At the request of the Guarantor, Rocla has agreed that it will, at its discretion provide credit and/or goods and services from time to time to:

.....(Company Name where customer is a company)  
.....(Company ABN Number)  
.....(Company Address)

(the "Debtor")

B. The Guarantor considers that by providing this Guarantee and Indemnity ("this Guarantee") there will be a commercial benefit flowing to the Guarantor.

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

**1. GUARANTEE**

**1.1 Guaranteed Moneys**

In consideration of Rocla agreeing, at the request of the Guarantor, to provide or continue to provide credit and/or goods and services from time to time to or for the Debtor, the Guarantor unconditionally and irrevocably guarantees to Rocla the due and punctual payment of:

- (a) all moneys due and payable or from time to time to become due and payable to Rocla under or in connection with the provision of credit and/or goods and services;
- (b) all other moneys which the Debtor either alone or jointly with any other person now or from time to time is or becomes actually or contingently liable to pay to Rocla under this Guarantee and any other agreement, security or negotiable or other instrument or as a result of any matter or thing; and
- (c) to avoid doubt, any GST that may be due and payable or from time to time become due and payable by Rocla under or in connection with the provision of credit and/or goods and services (the "Guaranteed Moneys").

**1.2 Result of Non Payment**

If the Debtor defaults in the due and punctual payment of the Guaranteed Moneys or in any part of them the Guarantor must pay those moneys to or as directed by Rocla.

**1.3 Demand**

Any demand to be made upon the Guarantor or the Debtor shall be deemed to be duly made if in writing and signed for or on behalf of Rocla by any secretary, director, manager, attorney, credit manager, other duly authorized officer or solicitor of Rocla from time to time.

**1.4 Continuing Guarantee**

This Guarantee is a continuing security for the whole of the Guaranteed Moneys and all other money payable under this Guarantee notwithstanding any settlement of account, intervening payment or anything else, until the Guaranteed Moneys and all other moneys payable under this Guarantee have been paid in full.

**2. GUARANTOR'S OBLIGATIONS**

**2.1 Principal Obligations**

The Guarantor's obligations:

- (a) are principal obligations and not ancillary or collateral to any other obligation; and
- (b) may be enforced against the Guarantor without Rocla being required to exhaust any remedy it may have against the Debtor or to enforce any security it may hold with respect to the Guaranteed Moneys.

**2.2 Obligations Absolute and Unconditional**

The liability of the Guarantor is absolute and unconditional and is not affected by anything which, but for this provision might operate to exonerate it from any of its obligations including, without limitation, anyone or more of the following (whether occurring with or without the consent of any person):

- (a) the grant to the Debtor, the Guarantor or any other person at any time, waiver or other indulgence or concession or any whole or partial discharge or release of the Debtor, the Guarantor or any other person;
- (b) any transaction or arrangement that may take place between Rocla and the Debtor, the Guarantor or any other person;
- (c) the bankruptcy, winding up, liquidation, becoming an insolvent under administration (in terms of the Corporation Law), the appointment of an administrator to or the death of, the Debtor, the Guarantor or any other person;
- (d) the fact that Rocla or any other person takes or fails to take any other guarantee or security;
- (e) any increase in the credit limit set by Rocla on the Debtor's account, including but not limited to where the Guarantor has not approved or been put on notice of that increase in credit limit;
- (f) the fact that Rocla or any other person exercises or refrains from exercising any other guarantee or security or any of the rights, powers or remedies conferred on it by the law or by any agreement, or fails to recover, by exercise of any such rights, any moneys owing to Rocla by the Debtor;

- (g) the variation (including a variation which increases the Guaranteed Moneys) replacement, extinguishment, loss, release, discharge, abandonment or transfer either in whole or in part of any agreement or document relating to the Guaranteed Moneys including any other guarantee or security now or in the future held by Rocla from any person;
- (h) the obligations of the Debtor or the Guarantor or any other person under any agreement or document relating to the Guaranteed Moneys including any other guarantee or security, being or becoming wholly or partially illegal, void, voidable or unenforceable;
- (i) the failure by Rocla to give notice the Guarantor of any default by the Debtor or any other person;
- (j) any legal limitation, disability, incapacity or other circumstance related to the Debtor, the Guarantor or any other person;
- (k) the fact that any person who was intended to be bound as Guarantor or surety in respect of the Guaranteed Moneys does not become bound or, having done so or any other guarantee, security, agreement, or negotiable instrument;
- (l) if the Debtor is a partnership any changes in membership of that partnership.

### 3. PREFERENCE

If, Rocla applies any amount against any of the Guaranteed Moneys, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:

- (a) Rocla's rights are to be reinstated and will be the same in respect of that amount, or in the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
- (b) the Guarantor shall immediately do anything (including the signing of the documents) required by Rocla to restore to Rocla any security or Guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.

### 4. SUSPENSION OF GUARANTOR'S RIGHTS

#### 4.1 Suspension of rights

Until the Guaranteed Moneys and other moneys payable under this Guarantee have been irrevocably paid and discharged in full, the Guarantor may not:

- (a) share in any security or guarantee held or money received by Rocla in respect of the Guaranteed Moneys or stand in the place of Rocla in respect of any such security or guarantee or right to receive money;
- (b) take any steps to enforce a right or claim against the Debtor in respect of any money paid by the Guarantor to Rocla under this Guarantee; or
- (c) have or exercise any rights as surety in competition with Rocla,

#### 4.2 Winding up or Bankruptcy of Debtor

If the Debtor is wound up or bankrupted, the Guarantor irrevocably authorises Rocla (but without any obligation on the part of Rocla) to:

- (a) prove for all moneys which the Guarantor has paid under the Guarantee; and
- (b) retain and carry to a suspense account and appropriate at Rocla's discretion any dividends and other moneys received in respect of the Guaranteed Moneys, until the Guaranteed Moneys have been irrevocably paid and discharged in full.

### 5. INDEMNITY

#### 5.1 Indemnity in respect of Guaranteed Moneys

For the consideration mentioned in Clause 1.1, the Guarantor unconditionally indemnifies Rocla against any loss which Rocla may suffer because of any of the following:

- (a) the Guaranteed Moneys, in whole or in part, are not recoverable from the Debtor or having been recovered are repaid and restored;
- (b) the Debtor fails to carry out its obligations under any agreement it has entered into with Rocla.

#### 5.2 Payment under Indemnity

The Guarantor shall pay to Rocla a sum equal to any loss in respect of which it indemnifies Rocla under this clause, including any of the Guaranteed Moneys (or any of the monies which, if recoverable would have formed part of the Guaranteed Moneys) which are not or may not be recoverable.

### 6. INTEREST ON OVERDUE AMOUNTS

- (a) The Guarantor shall, pay interest on any of the Guaranteed Moneys which are due and payable by it and unpaid (including interest payable under this clause).
- (b) Interest under clause 6(a) above will accrue from day to day from the due date for payment up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the same rate and in the same currency as interest is required to be paid on the relevant amount of the Guaranteed Moneys.

### 7. JOINT AND SEVERAL LIABILITY

If two or more persons are the Guarantor:

- (a) references to the Guarantor are references to them separately and as well refer to any two or any more of them together;
- (b) the promises by them in this Guarantee bind all of them together as well as bind each of them separately;
- (c) the fact that one person is released from its promise does not mean that any other person is also released.

### 8. NO SECURITY TO GUARANTOR

The Guarantor has not taken, and shall not take, security from the Debtor for or in consideration of the Guarantor assuming its obligations or any part of them under this Guarantee.

### 9. CHARGE AND MORTGAGE

For the purpose of securing payment to Rocla, the Guarantor hereby:

#### Charge

- 9.1 charges all of the Guarantor's right, title and interest in all present and after acquired real and personal property (including anything in respect of which the Guarantor has at any time a sufficient right, interest or power to grant a charge) in favour of Rocla to secure the Guaranteed Moneys;
- 9.2 authorises and consents to Rocla lodging a caveat or caveats or to registering a financing statement on the PPSR to note Rocla's interests under this clause;
- 9.3 irrevocably appoints Rocla and any person nominated by Rocla severally as the attorney of the Guarantor with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) any document to give effect to this Guarantee;

#### Mortgage

- 9.4 charges all of the Guarantor's right, title and beneficial interest in all present and after acquired real property in favour of Rocla to secure the Guaranteed Moneys;
- 9.5 agrees to deliver to Rocla within seven (7) days of written demand by Rocla a mortgage in registrable form incorporating the covenants contained for the jurisdiction relevant for the mortgage to be registered;
- 9.6 authorises and consents to Rocla taking all actions necessary to give effect to this security including the lodgment of a caveat upon the title of the Guarantor's real property;
- 9.7 irrevocably appoints Rocla and any person nominated by Rocla severally as the attorney of Rocla with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.

### 10. Personal Property Securities Act 2009 (Cth) (PPSA)

10.1 The Guarantor grants a security interest in all the Guarantor's present and after-acquired property to Rocla to secure payment of the Guaranteed Moneys.

10.2 **Exclusion of PPSA provisions.** To the extent the law permits:

- (a) for the purposes of section 115(1) and 115(7) of the PPSA:
  - (i) Rocla need not comply with sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4) or 135; and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, Rocla need not comply with sections 132 and 137;
- (c) if the PPSA is amended after the date of this document to permit the Guarantor and Rocla to agree to not comply with or to exclude other provisions of the PPSA, Rocla may notify the Guarantor that any of these provisions is excluded, or that Rocla need not comply with any of these provisions, as notified to the Guarantor by Rocla; and
- (d) the Guarantor and Rocla must not disclose information of the kind specified in section 275(1) of the PPSA.

10.3 **Exercise of rights by Rocla.** The Guarantor agrees that where Rocla has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

10.4 **No notice required unless mandatory.** To the extent the law permits, the Guarantor waives its rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement).

10.5 **Guarantor's liability not extinguished.** Rocla's rights and the Guarantor's liabilities under this agreement is not affected by any act, or failure to act, by Rocla, or, by anything else that might otherwise affect Rocla's rights or the Guarantor's liabilities under the laws relating to guarantees, including the fact that Rocla does not:

- (a) register any security interest capable of being registered on the Personal Property Securities Register;
- (b) perfect any security interest in accordance with the requirements under the PPSA;
- (c) enforce any security interest; or
- (d) execute this document properly or at all.

### 11. INDEMNITY FOR COSTS

11.1 The Guarantor indemnifies Rocla against, and shall pay Rocla, the amount of all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and all fees or other duties, in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of the Guarantee;
- (b) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Guarantee; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under this Guarantee.

11.2 The Guarantor must pay or reimburse Rocla (on a full indemnity basis), all costs and expenses of Rocla in connection with:

- (a) appointing a Receiver or Receiver and Manager;
- (b) enforcing, exercising or protecting its security interest under this document;
- (c) maintaining, protecting or realising the Collateral; and
- (d) a default by the Guarantor.

### 12. NOTICES

#### 12.1 Method of Giving Notices

A notice, consent, approval or other communication (each a "Notice") under this Guarantee shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered; or
- (b) sent by pre-paid mail; or to that person's address.

#### 12.2 Time of Receipt

A notice given to a person in accordance with this clause is treated as having been given and received on the day of actual delivery.

#### 12.3 Address for Notices

For the purpose of this clause, a person (the "sender") may take the address of another person (the "recipient") to be:

- (a) the address given in this Guarantee; or
- (b) where the recipient notifies the sender of another address, the last address so notified to it.

### 13. LAW AND JURISDICTION

The law of the State or Territory in which this Guarantee is lodged shall apply to the terms of this Guarantee and any proceedings in respect of or any cause of action arising out of this Guarantee shall at the option of Rocla be instituted, heard and determined in a court of competent jurisdiction in the Capital City of that

State and such court shall be deemed to possess territorial jurisdiction to hear and determine such proceedings.

**14. PRIVACY ACT 1988 (CTH) (PRIVACY ACT)**

14.1 The Guarantor acknowledges and agrees that Rocla may collect personal information and credit information about the Guarantor in accordance with Rocla's privacy policy available on its website or on request from Rocla.

14.2 The Guarantor acknowledges that the information provided is the basis for evaluation by Rocla of the financial standing and creditworthiness of the Guarantor and:

- (a) certifies that the information provided is true and correct;
- (b) acknowledges that Rocla has informed the Guarantor, in accordance with the Privacy Act, that certain items of personal information, including an opinion about the Guarantor are permitted to be kept on a credit information file and might be disclosed to credit reporting bodies;
- (c) in accordance with the Privacy Act:
  - (i) agrees to Rocla obtaining from a business which provides information about the commercial creditworthiness of persons, information concerning the Guarantor's commercial activities or commercial creditworthiness and using each information for the purpose of assessing whether to accept the Guarantors;
  - (ii) authorises Rocla to exercise the Guarantor's rights to access the Guarantor's credit information file and credit reports;
- (d) agrees that Rocla may give to and seek from any credit providers reports and information that has any bearing on the Guarantor's creditworthiness, credit standing, credit history or credit capacity for any of the following purposes to:
  - (i) assess an application by the Customer for credit or commercial credit;
  - (ii) notify other credit providers of a default by the Customer or the Guarantors;
  - (iii) exchange information with other credit providers as to the status of the Customer's account where the Customer is in default with Rocla or other credit provider;
  - (iv) access the Customer's or Guarantor's creditworthiness or commercial creditworthiness at any time;
  - (v) assess whether to accept the Guarantors or to continue supplying credit to the Customer;
- (e) agrees that the Supplier may seek, from a credit reporting body, a credit report containing personal information about the Guarantor to assess whether to accept the Guarantor for credit applied for, or provided to, the Customer;
- (f) expressly consents to the use and disclosure of all personal information in relation to credit information that Rocla may from time to time need to disclose to a credit reporting body; and
- (g) agrees that these authorisations continue to have effect for the duration of the period during which credit or commercial credit is provided for or sought by the Customer from Rocla or while any moneys are owed by the Guarantor or the Customer to the Supplier on any account under this or any other Guarantee or any terms and conditions for the sale of products or supply of services by Rocla to the Customer as the case may be.

**15. TRUSTEE PROVISIONS**

15.1 If the Guarantor enters into this Guarantee as trustee of a trust it must first advise Rocla in writing prior to executing this Guarantee and after advising Rocla then the Guarantor:

- (a) is liable both personally and in its capacity as trustee;
- (b) gives Rocla an assurance that:
  - (i) the Guarantor has power and authority as trustee of the trust to enter into this Guarantee and is doing so for a proper purpose;
  - (ii) the Guarantor is doing so, and is entitled to do so in a way that permits Rocla to resort to the trust property in priority to the claims of the beneficiaries;
  - (iii) the Guarantor is entitled to be indemnified fully out of the property of the trust for its liabilities and obligations under this Guarantee in priority to the claims of the beneficiaries.

**16. GENERAL**

**16.1 Assignment**

Rocla may assign or transfer all or any part of its rights or obligations under this Guarantee without the consent of the Guarantor.

**16.2 Rocla's Statement Conclusive**

A statement, signed on behalf of Rocla by any of its authorised representatives, as to any matter or of any amount (including, without limitation, amounts owing by the Guarantor) at the date specified in the statement is conclusive in the absence of manifest error.

**16.3 Execution**

This Guarantee is binding on the Guarantor whether or not it is executed by Rocla or any other person or body corporate named as Guarantor. Further, each party consents and agrees that this Guarantee may be executed and delivered by an online system using a web-based portal, or by way of email or other electronic means, and in each case it must be considered an original and each party is legally bound by it as if this Guarantee was delivered as an original document with original signatures.

**16.4 Attorneys**

Each attorney who executes this Guarantee on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this Guarantee

The GUARANTOR acknowledges that Rocla has advised it to seek independent legal advice as to the effect of the provisions of the Guarantee, prior to execution of this Guarantee.

1. Signed By,  
 (Signature) ..... Date ...../...../.....  
 (Print Name) .....  
 Guarantor

2. Signed By,  
 (Signature) ..... Date ...../...../.....  
 (Print Name) .....  
 Guarantor

Witness Name..... Date ...../...../.....  
 Address .....  
 Signature.....

Witness Name..... Date ...../...../.....  
 Address .....  
 Signature.....

3. Signed By,  
 (Signature) ..... Date ...../...../.....  
 (Print Name) .....  
 Guarantor

4. Signed By,  
 (Signature) ..... Date ...../...../.....  
 (Print Name) .....  
 Guarantor

Witness Name..... Date ...../...../.....  
 Address .....  
 Signature.....

Witness Name..... Date ...../...../.....  
 Address .....  
 Signature.....

## ROCLA GENERAL TERMS AND CONDITIONS

### 1. INTERPRETATION

#### (1) Definitions

In these Conditions, unless the context requires otherwise:

“Anti-Corruption Laws” means any law prohibiting or relating to bribery, corruption, kickbacks, secret commissions or money laundering including the *Foreign Corrupt Practices Act 1977* (US), *Bribery Act 2010* (UK), *Criminal Code Act 1995* (Cth) and any anti-corruption regulations and provisions applicable in the European Union or in any other locations in which any member of the Fletcher Group carries on business.

“Australian Consumer Law” means the Australian Consumer Law in the *Competition and Consumer Act 2010* (Cth).

“Conditions” means the Rocla General Terms and Conditions.

“Consumer” means a consumer as that term is defined in the Australian Consumer Law.

“Consumer Contract” means a contract for the supply of products or services to an individual whose acquisition of the products or services is wholly or predominantly for personal, domestic or household use or consumption. However, if the relevant parts of the definition of ‘Consumer Contract’ under the Australian Consumer Law are amended at any time, this definition is also amended accordingly.

“Contract” has the meaning given to that term in clause 2(1).

“Credit Terms” means the credit application and terms of the credit agreement between Rocla and the Customer.

“Customer” means the person to whom the products and services are supplied.

“Fletcher Group” means Fletcher Building Limited (ARBN 096 046 936) and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

“Force Majeure Event” means any event outside a party’s reasonable control including acts of God, declared or undeclared war, act of terrorism, fire, flood, storm, earthquake, hurricane, cyclone, riot, power failure, industrial action, defaults of manufacturers or suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond a party’s control that may prevent or delay a party from performing their obligations under any Contract.

“Insolvency Event” means:

- (a) a receiver, receiver and manager, liquidator, administrator, or similar official is appointed in respect of the Customer or any of its property, or any security over any substantial part of its assets is enforced;
- (b) ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, its creditors or threatens to do so, or stops payments to its creditors generally;
- (c) the Customer is, becomes, or is deemed to be insolvent or bankrupt; and
- (d) if the Customer is an individual, anything having a similar effect to any of the events specified above happens.

“Interest Rate” means the rate of 8% above the cash rate last published by the Reserve Bank of Australia (as at the due date).

“Personal Information” has the meaning given to that term by the Privacy Law and includes, where relevant, credit information and credit eligibility information defined in the Privacy Law.

“PPSA” means the *Personal Property Securities Act 2009* (Cth);

“PPSR” means the Personal Property Securities Register established by the PPSA;

“Privacy Law” means the *Privacy Act 1988* (Cth) and any legislation from time to time in force which affects privacy rights or Personal Information and any rules, regulations, guidelines or orders issued under the legislation, including the Privacy (Credit Reporting) Code.

“PMSI” means a purchase money security interest as that term is defined in the PPSA.

“Rocla” means Rocla Pty Ltd ACN 000 032 191 including its employees, contractors, partners and/or agents.

“Security Interest” has the meaning given to that term in the PPSA.

“Small Business Contract” means a contract where:

- (a) at the time the contract is entered into, at least one party to the contract is a business that employs fewer than 20 persons; and
- (b) either of the following applies:
  - (i) the upfront price payable under the contract does not exceed \$300,000; or
  - (ii) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000.

However, if the definition of ‘Small Business Contract’ under the Australian Consumer Law is amended at any time, this definition is also amended accordingly.

#### (2) Interpretation

In these Conditions:

- (a) A reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (b) A reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

- (c) The word “including” means including without limitation.

## **2. CONTRACT & QUOTES**

- (1) The contract between the Customer and Rocla is constituted by: (i) the Conditions; (ii) the Credit Terms; and (iii) the extent to which Rocla accepts an order in accordance with clause 6(1) (each a “Contract”). The Conditions, the Credit Terms and the extent to which Rocla accepts the order govern all contracts for the supply of products by Rocla to the Customer and constitute the entire agreement in connection with the supply of products between Rocla and the Customer. No modification or variation to the Conditions or the Credit Terms, any additional terms or conditions or any terms inconsistent with the Conditions or the Credit Terms provided by the Customer (whether put forward in the order, the Customer’s specification or otherwise) will bind Rocla, unless expressly and specifically agreed to in writing by Rocla. The Conditions and the Credit Terms supersede all previous written agreements or terms and conditions which have previously governed a contract for the supply of products by Rocla to the Customer.
- (2) A quotation will not constitute an offer to sell products or services to the Customer. No contract for the supply of products or services will exist between Rocla and the Customer until a Customer’s order for products or services has been accepted by Rocla (such acceptance of the Customer’s orders may be made and communicated by Rocla in writing or by overt act of acceptance). The Customer will be under no obligation to place an order with Rocla. Rocla may accept or refuse any order for products or services in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.

## **3. PRICE**

- (1) Unless otherwise expressly agreed in writing, the amount payable for products and services will be Rocla’s list price at the date of delivery or collection. The price is exclusive of any freight charges, customs duty, GST or similar taxes, which the Customer will pay in addition to the price at the same time and in the same manner as the price.
- (2) Unless otherwise stated in the Conditions, Rocla may vary the price to reflect any change in costs, taxes or duties incurred by Rocla. Any such variation in price will only be applicable to orders not yet accepted by Rocla.
- (3) Rocla will be entitled to set off against any money owing to the Customer amounts owed to Rocla by the Customer on any account whatsoever. The Customer must not assert any right of set off against Rocla and will pay all amounts owing to Rocla without deduction.

## **4. VARIATIONS TO SCOPE OF CONTRACT**

- (1) If Rocla’s price list does not apply, the price is based on:
  - (a) the scope of the work as detailed in the information provided by the Customer to Rocla for the purpose of a Contract including, where applicable, plans, specifications (including standards and finish), schedules and nominated quantities; and
  - (b) the delivery arrangements in accordance with clause 6.
- (2) Any variations to the scope of the work or delivery arrangements will be a variation to the Contract entitling Rocla to vary the price stated.
- (3) Rocla may vary the Conditions or Credit Terms by notice in writing to the Customer. If the Contract is a Consumer Contract or a Small Business Contract, then the Customer may consider the variation and, if not acceptable, may elect not to proceed with the purchase of the products or services ordered before the date of the variation but which are intended to be subject to the variation. If the Contract is not a Consumer Contract or a Small Business Contract, the Customer agrees that products delivered and services performed and/or ordered after the date of the notice of the variation will be subject to the variation and acceptance of the products or services or the placing of the order will be deemed to be an acceptance of such varied terms and conditions.

## **5. PAYMENT**

- (1) The amount due includes the price, any variations to the price and any additional charges which Rocla is entitled to make.
- (2) Subject to the Conditions, the Customer will pay the amount due in accordance with the Credit Terms.
- (3) Where no credit arrangements have been authorised or previously agreed by Rocla, but credit has been agreed by Rocla as a condition of a particular Contract, the Customer will pay the amount due within the month following the month of delivery or collection of the products or the provision of the services.
- (4) Where no credit arrangements have been authorised or agreed by Rocla and the products are delivered within Australia, the Customer will pay the amount due before the first delivery of the products.
- (5) Where the products are to be delivered outside of Australia:
  - (a) terms of payment (unless otherwise agreed in writing) will be by means of irrevocable letter of credit established in Rocla’s name with a bank of its nomination;
  - (b) Rocla will be entitled to payment in full for the products covered by shipping documents, consisting of proper bills of lading, invoices and, in the case of C.I.F sales, negotiable insurance certificates, or a certificate of manufacture if the sale is made on such basis, upon Rocla tendering those documents to the Customer or the Customer’s authorised agent;
  - (c) if the products are ready for shipment but the Customer is unable for any reason to accept delivery or Rocla is unable to obtain proper shipping documents for a period of 30 days because of a lack of transportation, non-insurability of the shipment or government regulations (Australia or any other country) Rocla may terminate this agreement or become entitled to payment upon tender to the Customer, or its authorised agent, of the certificate of manufacture.



- (6) Payment for all the products and services supplied will become immediately due and payable, regardless of the credit arrangement authorised by Rocla, if:
  - (a) an amount due remains unpaid as at the due date; or
  - (b) an Insolvency Event occurs.
- (7) If the Customer does not pay Rocla by the due date, the Customer will pay interest on monies due, charged on a daily basis at the Interest Rate from the due date for payment until the actual date of payment. If the Customer has an account with Rocla, Rocla may debit the Customer's account monthly or at such other times it chooses for such interest and it will be payable together with the overdue amount. The parties agree that any such interest is a genuine pre-estimate of the loss that will be suffered by Rocla for late payment.
- (8) The Customer will pay all Rocla's expenses of collection of overdue monies and enforcement of any Contract on a full indemnity basis. Such expenses include collection fees and/or commission, agent's fees and legal fees.
- (9) Where the price is stated on a volumetric basis, payment will be based on measurement of the volume of product as loaded by Rocla for delivery.

#### **6. ORDERS AND DELIVERY**

- (1) All orders for products are subject to acceptance by Rocla. Rocla may accept or decline, in whole or in part, any order. Acceptance may be in writing or by Rocla delivering or making products available for collection (whichever occurs first). Acceptance of an order by Rocla gives rise to a Contract.
- (2) Acceptance of orders involving import and export conditions will be subject to Rocla being furnished with evidence satisfactory to Rocla that all requisite licences and permits have been granted and that all other government prerequisites (both Australian and countries of destination) have been complied with. If such evidence is not furnished within 30 days from the date of acceptance of an order, the order will be subject to cancellation by Rocla.
- (3) Subject to clause 6(4) delivery will be on reasonable notice from the Customer to Rocla and the Customer will not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- (4) Where a Contract includes a delivery schedule delivery will be in accordance with the dates and other information contained in such delivery schedule.
- (5) Any times quoted for delivery are estimates only and Rocla will not be liable for any failure to deliver or delay in delivery of products or performance of services arising from any cause whatsoever whether or not beyond the control of Rocla.
- (6) If the Customer refuses or denies delivery, the Customer must still pay for products or services as set out in clause 5. The Customer must also pay any additional storage, freight, holding or handling charges incurred by Rocla.
- (7) Rocla may deliver products by instalments and failure to deliver any instalment will not entitle the Customer to terminate a Contract in whole or in part.
- (8) Deliveries are subject to suitable access, firm standing, storage, unloading and manoeuvring space, as determined by Rocla. Rocla will not be liable for, and the Customer will indemnify Rocla against any claims for, damage caused to access ways, storage areas, plant, equipment or works during delivery except to the extent Rocla has been negligent or breached the Law or the Contract.
- (9) Additional costs incurred by Rocla in delivering or unloading the products in the following circumstances will be at the Customer's expense:
  - (a) outside the hours of 7.30a.m. to 4.00p.m. weekdays (excluding public holidays);
  - (b) due to delays at the site or an unsuitable site; or
  - (c) where less than full truckloads are required.
- (10) The Customer warrants that its receivable facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer indemnifies Rocla against any breach of such standards, laws or regulations during delivery, and against any damage or loss caused by leakage, spillage, breakage or contamination during or caused by delivery except to the extent Rocla has been negligent or breached the Law or the Contract.

#### **7. ORDER CANCELLATION**

Without limiting any statutory entitlement of a Consumer to rescind a Contract or any right to do so under the Conditions, any order may only be cancelled, varied or suspended with the written consent of Rocla and in the event of such cancellation, variation or suspension, the Customer undertakes to reimburse and indemnify Rocla for any costs, expenses or charges incurred by Rocla in preparation for, and in the execution of, an order for products or services that will no longer be supplied to the Customer as a result of the cancellation, variation or suspension.

#### **8. RISK, TITLE & PERSONAL PROPERTY SECURITIES ACT**

- (1) Risk in the products passes on delivery and, in the event of a site being unattended, the delivery docket/manifest signed by the cartage contractor will be evidence of delivery of the products.
- (2) Legal and equitable title in the products will not pass to the Customer until payment in full for all debts accrued or owed by the Customer to Rocla has been received by Rocla in cleared funds.
- (3) Until Rocla receives payment for the products in full, Rocla retains:
  - (a) the legal and equitable ownership of the products;
  - (b) the right to enter upon the Customer's premises and retake possession of the products;
  - (c) the right to keep or resell any products repossessed under clause 8.3(b); and
  - (d) any other rights Rocla may have at law or under the PPSA.
- (4) Until Rocla receives payment for the products in full, the Customer acknowledges that :



- (a) Rocla has a PMSI which attaches over the products and their proceeds and a Security Interest in relation to other amounts owed by the Customer to Rocla;
  - (b) Rocla may register its PMSI and Security Interest on the PPSR and, where necessary, amend the registration; and
  - (c) it will be liable for Rocla's costs of registration of its PMSI and Security Interest on the PPSR.
- (5) The Customer undertakes to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which Rocla asks and consider necessary for the purposes of:
- (a) ensuring that a security interest created under the Conditions or any Contract is enforceable, perfected and otherwise effective;
  - (b) enabling Rocla to apply for any registration, or give any notification, in connection with a security interest created under the Conditions or any Contract so that the security interest has the priority required by Rocla, including anything Rocla asks the Customer to do in connection with the PPSA.
- (6) The Customer must not grant any other person a security interest over the products or their proceeds.
- (7) To the extent permitted by law, if the PPSA applies, the Customer irrevocably waives its rights it may have to:
- (a) receive notices or statements under sections 95, 118, 121(4), 129, 130, 132(2), 132(4) and 135(2) of the PPSA;
  - (b) redeem the products under section 142 of the PPSA;
  - (c) reinstate any Contract under section 143 of the PPSA; or
  - (d) receive a verification statement as defined in the PPSA.
- (8) Nothing in this clause 8 prevents Rocla from taking action against the Customer for the purchase price of the products.
- (9) Until title in the products passes to the Customer and without prejudice to Rocla's rights under the PPSA:
- (a) the Customer may use the products with or in other items on condition that the final commodity will be Rocla's property as a security for full payment for the products;
  - (b) until the Customer uses or sells the products, the Customer must store them separately so that they are clearly identifiable as Rocla's property;
  - (c) the Customer may fix the products into the articles belonging to any other person on condition that the resulting item is owned in common by Rocla and that other person.
  - (d) the Customer may sell the products in the ordinary course of the Customer's business on the following conditions:
    - (i) the Customer makes the sale as Rocla's agent and bailee;
    - (ii) any proceeds of sale received by the Customer are held by the Customer on trust for Rocla to the extent that the proceeds of sale relate to Rocla's products which are incorporated into the final commodity or item;
    - (iii) the Customer must keep Rocla's proportion of the proceeds of sale separately and so that they are clearly identifiable as belonging to Rocla;
    - (iv) if the Customer has not received the proceeds of sale, it will, if Rocla requires, transfer to Rocla the Customer's rights in respect of the sale price.

## 9. DEFAULT

If:

- (1) Rocla has any reasonable grounds to believe that the Customer may not be able to make due and punctual payment to Rocla of any monies owing by the Customer or there is any default or failure by the Customer in making such payments;
  - (2) the Customer fails to take delivery of any products;
  - (3) the Customer suffers an Insolvency Event;
  - (4) there is a material breach by the Customer of any Contract or agreement between the Customer and any other member of the Fletcher Group; or
  - (5) contractual performance by either Rocla or the Customer is delayed or prevented due to any Force Majeure Event;
- then:
- (6) all monies payable by the Customer to Rocla may, at Rocla's election, become immediately due and payable notwithstanding the due date for payment may not have expired;
  - (7) Rocla may, without prejudice to any other rights it may have, do any or all of the following:
    - (a) suspend or withdraw any credit facilities which may have been extended to the Customer;
    - (b) immediately terminate or suspend the whole or any outstanding part of any Contract;
    - (c) in respect of products already delivered, and which title has not passed to the Customer, enter onto the Customer's premises to recover and resell the products for its own benefit;
    - (d) recover from the Customer the cost of materials or products acquired for the purpose of future deliveries of products;
    - (e) exercise such rights as are afforded to Rocla under the PPSA; and
    - (f) register a default with any credit reference facility.

## 10. SPECIFICATIONS

- (1) Where Rocla manufactures or supplies products according to the Customer's specifications:
  - (a) Rocla does not warrant the suitability or performance of the product; and
  - (b) the Customer must provide to Rocla accurate information sufficient to enable Rocla to provide the products specified and the Customer warrants to Rocla that the information and any products to be manufactured by

Rocla under any Contract do not breach any copyright, registered design, patent or other right of any third party and the Customer will indemnify Rocla in relation to any such breach.

(2) Unless otherwise stated in the Conditions the products will be in conformity with a standard determined by Rocla.

#### **11. RETURNABLE PACKAGING**

Unless otherwise stated in a Contract, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the products remain the property of Rocla and must be returned in good order and condition to Rocla within 30 days of the date of delivery. Any such packaging not returned by the due date will be paid for by the Customer at a price determined by Rocla.

#### **12. SAMPLES AND BLENDING**

Any sample product or sample colour is provided to indicate only the general nature of the product. Rocla provides no warranty or guarantee that the products supplied will correspond in colour, texture or blend with any sample or with any previous or future product supplied. Rocla will not be liable for any failure of the Customer or others to blend the products.

#### **13. NON-CONFORMING PRODUCT**

Where a product is supplied on the basis of a description or marking such as "nonconforming", "second", "reject" or similar, no warranty or undertaking (express or implied) whatsoever is given by Rocla. Notwithstanding the Conditions, Rocla will not be liable in any way for the performance or use of, or any defect in, such a product.

#### **14. FITTINGS**

Unless otherwise stated in a Contract, cast in or similar fittings for handling the products are to be removed or finished by the Customer.

#### **15. PRESSURE APPLICATIONS**

Unless otherwise stated in a Contract, the products supplied are not warranted by Rocla to be suitable for applications or use involving internal pressure.

#### **16. DEFECTS**

- (1) The Customer will ensure it has an authorised representative at the delivery site to check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket will represent acknowledgment by the Customer that the products comply with its order and have been supplied in accordance with the Conditions.
- (2) If the Customer is not a Consumer, notice of any defects will be given to Rocla in writing on the delivery docket / receipt / manifest signed by the Customer and immediately returned with the cartage contractor. Where the point of delivery or collection is unattended, the Customer will give notice in writing to Rocla, within 24 hours from the time of delivery or collection and prior to installation, of any defects in the products.
- (3) If notice in accordance with clauses 16(1) or 16(2) is not given, the products will be deemed to be in good order and condition and in accordance with the Conditions and the Customer must accept the products accordingly.
- (4) Rocla will have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product must not be installed.

#### **17. TESTING AND REPORTING**

- (1) Where the Customer requires the products to be subject to special testing or inspection, the Customer will pay all costs of and associated with such testing or inspection.
- (2) Any inspector or other person attending Rocla's premises on behalf of the Customer must be authorised in writing by the Customer.
- (3) The Customer will provide Rocla with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to Rocla's products.

#### **18. RETURN OF PRODUCTS**

- (1) Unless agreed in writing by Rocla, Rocla will not accept the return of products. Products specifically manufactured to the Customer's specifications or altered from standard specifications are not returnable. Only products returned in saleable condition can be accepted.
- (2) Products accepted for return by Rocla may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by Rocla and debited to the credit account of the Customer.
- (3) The proof of purchase from the Customer must accompany all products returned to Rocla.

#### **19. LIABILITY**

- (1) If the Customer is a Consumer:
  - (a) The products come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage in accordance with the Australian Consumer Law. The Customer is entitled to have the products repaired or replaced if the products fail to be of acceptable quality and the failure does not amount to a major failure.
  - (b) The guarantees under the Australian Consumer Law are given by Rocla.
  - (c) If the Customer believes the products do not comply with the statutory guarantees, they must contact Rocla and the parties may make arrangements for the return of the products. If Rocla agrees that the products do not comply with the statutory guarantees Rocla will refund the costs of returning the products to Rocla and, in all other respects, act in accordance with its obligations under the Australian Consumer Law.
  - (d) Subject to clause 19(1)(b), all other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by law are expressly excluded to the maximum extent permitted by law, unless

agreed by Rocla in writing. Rocla does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between Rocla and the Customer by law.

- (2) If the Customer is not a Consumer:
- (a) All claims for Rocla's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to Rocla within fourteen (14) days from the time of delivery of products. If the Customer fails to provide such notice then the Customer will be deemed to have accepted the products.
  - (b) All terms, representations, warranties and conditions that might otherwise be granted or implied by law are expressly excluded to the maximum extent permitted by law, unless Rocla agrees in writing. Rocla does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between Rocla and the Customer by law.
  - (c) Rocla's liability for breach of a non-excludable condition or warranty is limited, at Rocla's option, to any one of the following:
    - (i) the replacement of the products or the supply of equivalent products;
    - (ii) the repair of the products;
    - (iii) the payment of the cost or providing replacement products or of acquiring equivalent products;
    - (iv) the payment of the cost of having the products repaired; or
    - (v) in the case of services, the re-supply of the services or paying for the cost of re-supplying the services.
  - (d) If a product is defective Rocla will not be liable for the removal of any defective products or for the re-installation of any products.
  - (e) Rocla will not be liable for any defect, loss, damage or injury howsoever arising by reason of:
    - (i) a failure to use the products in a manner other than what is normally expected to be done with or in relation to the products;
    - (ii) any delay in delivery;
    - (iii) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the products.
  - (f) Any design or description of use, capacity, durability, colour, manner of installation, information, detail contained in drawings, data sheets, technical brochures or other documents provided by Rocla are given as a general guide only and the Customer acknowledges that it has satisfied itself as to the suitability of the products for the Customer's particular purpose, use or application and Rocla will not be liable in these respects.
- (3) Neither the Customer or Rocla are liable to the other for:
- (a) any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every plaintiff in a like situation would suffer; or
  - (b) any loss of revenue, business or profits or any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property.
- (4) The Customer indemnifies Rocla for any loss, cost, damage or expense suffered by Rocla arising from any failure to install the products in accordance with their applicable installation instructions and manuals provided with the products or to operate the products in accordance with their applicable operation instructions and manuals provided with the products, or in connection with the negligence of the Customer including in relation to the installation or operation of the products.

#### **20. GST**

- (1) In the Conditions, the expressions "GST", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)
- (2) With the exception of any amount payable under this clause 20, unless otherwise expressly stated, all amounts stated to be payable by the Customer under any Contract are exclusive of GST.
- (3) If GST is imposed on any supply made under or in accordance with any Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Contract, subject to the provision of a tax invoice.

#### **21. PRIVACY**

- (1) The Customer acknowledges and agrees that Rocla may collect personal information and credit information about the Customer and its directors, officers, partners and the Guarantors (each a "Relevant Party").
- (2) Rocla's privacy policy is available on its website or on request from Rocla and form part of the Conditions.
- (3) Rocla's web site may be hosted, or some data may be stored, overseas for reasons of uniformity and convenience for the Fletcher Group. All personal information and credit information derived from Australia will still be treated in accordance with Rocla's privacy policy while being stored overseas.
- (4) In accordance with Rocla's privacy policy, the Customer agrees that Rocla may use or disclose information to the Fletcher Group and to third parties for the purpose of providing the products and services; providing information about products and services; sending information on the Fletcher Group and its services; performing the Fletcher Group's administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by Law; considering any other application the Customer may make to Rocla or any

other Fletcher Group Member; managing Rocla's rights and obligations in relation to external payment systems e.g. credit card schemes and debit payment schemes; conducting market research or customer satisfaction research; developing, establishing and administering arrangements (including rewards programs) with other organisations in relation to the promotion, administration and use of any of the Fletcher Group's products and services; and developing and identifying products and services that may interest the Customer.

- (5) The Customer warrants to Rocla that it has obtained the consent of each of the Relevant Parties to the collection, use and disclosure of their personal information and credit information by Rocla in accordance with this clause 21 and Rocla's privacy policy.

#### **22. ANTI-CORRUPTION LAWS**

- (1) The Customer agrees to comply with the Anti-Corruption Laws and must not commit any act or omission which causes or would cause it or Rocla to breach, or commit an offence under, any Anti-Corruption Laws.
- (2) The Customer warrants and represents that it has not been convicted of any offence, and has not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under Anti-Corruption Laws.
- (3) The Customer must, to the extent permitted by law, promptly notify Rocla in writing if it becomes aware at any time during the term of any Contract that any of the representations or warranties in clause 22(2) are, or might reasonably be expected to be, no longer correct.

#### **23. AMENDMENTS AND WAIVER**

Rocla will not be taken to have agreed to any amendment or waiver of any provision of any Contract unless the amendment or waiver is in writing signed by Rocla. No terms and conditions referred by the Customer after the date of a Contract will form part of the Contract unless expressly agreed in writing by Rocla.

#### **24. GOVERNING LAW**

Each Contract is governed by the law for the time being of the State from which the products or services are to be supplied.

#### **25. FORCE MAJEURE**

Rocla will not be liable for any delay, loss, damage or injury arising by reason of a Force Majeure Event.

#### **26. SUBJECT TO STATUTE**

Each Contract is subject to the provisions of any statute applicable to it and which may not be varied by the terms of the Contract. If any provision of a Contract is void or unenforceable that provision will be severed and the remaining provisions will continue with full force and effect.

#### **27. NOTICES**

All notices given under or in connection with any Contract will be in writing and given or delivered to the recipient at its address specified in the Contract or at its registered office or principal place of business.

#### **28. CONFIDENTIAL INFORMATION**

If at any time Rocla discloses to the Customer or the Customer becomes aware of confidential information of Rocla including confidential information relating to products, material, procedures, tests or equipment, the Customer will not use the information for any purpose not approved by Rocla and will not disclose that confidential information to any other person unless expressly agreed in writing by Rocla.

#### **29. ASSIGNMENT**

A Contract is assignable by the Customer in whole or in part only with Rocla's written consent.

#### **30. UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS**

The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.