

1. Definitions

- 1.1 "Rockys" means Rockys Electrical Pty Ltd, also trading as Rockys Solar, its successors and assigns or any person acting on behalf of and with the authority of Rockys Electrical Pty Ltd.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting Rocky to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by Rockys to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Rockys and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Rockys.
- 2.3 The Client acknowledges that these terms and conditions are meant to be read in conjunction with the terms and conditions supplied by the utilities operator in relation to the installation of a Small Embedded Generator (SEG) (where an SEG is supplied as part of, or in conjunction with, any Services provided under this agreement). Under those terms and conditions the Client is required (to ensure the SEG remains safe and functional) to regularly have the SEG inspected and maintained as specified in those terms and conditions. Whilst inspection and/or maintenance of the SEG is the Client's sole responsibility to arrange, Rockys can provide such services at its usual rates if requested.
- 2.4 Rockys will notify the Client's electricity distributor/retailer of the installation. The electricity distributor/retailer may then require the replacement of the Client's existing power meter the cost of which shall be the Client's responsibility and is not included in any pricing specified under this agreement.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Rocky shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Rocky in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Rocky in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Rocky; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give Rockys not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Rockys as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At Rockys' sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Rockys to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to Rockys' current price list; or
 - (c) Rockys' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Rockys reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where the value of any Renewable Energy Certificate's (REC's) and/or Smallscale Technology Certificates (STC's) upon which the sale Price is dependant, changes as REC's and/or STC's are traded on the open market and the price varies from time to time; or
 - (d) where there is any change to any monies available to the Client from the Australian Federal Government's Renewable Energy Target Program (RET Program), (if applicable) or any other Commonwealth, State or Local Government rebates or incentives; or
 - (e) where additional Services is required due to unforeseen circumstances (including, but not limited to, limitations to accessing the site, incorrect plans or other pertinent information or data, prerequisite work by any third party not being completed, safety considerations etc.) which are only discovered on commencement of the Services; or
 - (f) in the event Rockys incurs additional costs enforced by energy bodies if the import export meter cannot be installed, this includes but is not limited to, asbestos metre boards, such costs will be passed on to the Client, due to such unforeseen circumstances which are only revealed once Rockys has commenced installation of the Goods; or
 - (g) in the event of increases to Rockys in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Rockys' control.

- 5.3 Variations will be charged for on the basis of Rockys' quotation, and will be detailed in writing, and shown as variations on Rockys' invoice. The Client shall be required to respond to any variation submitted by Rockys within ten (10) working days. Failure to do so will entitle Rockys to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At Rockys' sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Rockys, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Rockys' payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by Rockys.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Rockys.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Rockys nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Rockys an amount equal to any GST Rockys must pay for any supply by Rockys under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Rebates and Incentives**
- 6.1 The Client authorises Rockys to apply in the Client's name for any grant, rebate or any other benefit (hereafter referred to as a Rebate) available, (*if applicable*) from the Commonwealth, State Government, or any local state Solar Feed Tariff Schemes in relation to the installation of a solar system and to receive payment of that Rebate on the Client's behalf.
- 6.2 The Client agrees to sign any necessary documents, provide any necessary information and take any necessary action Rockys may require, to enable Rockys to obtain payment of a Rebate.
- 6.3 If Rockys receives payment of a Rebate, Rockys will apply that payment in or towards satisfaction of the Price.
- 6.4 Rockys is not responsible for any failure to obtain a Rebate and the Client shall remain liable to Rockys for the whole of the Price and any other amounts due to Rockys which are not paid in full.
- 6.5 The Client unconditionally assigns all Renewable Energy Certificates (RECs) and/or Smallscale Technology Certificates (STC's) to which the Client is entitled in respect of the Goods to Rockys unless otherwise negotiated.
- 6.6 The Client acknowledges that, in certain circumstances, the Commonwealth Government, State Government or local government council (as applicable) may require repayment of a Rebate by the Client and in such circumstances Rockys will have no liability to the Client.
- 7. Delivery**
- 7.1 Subject to clause 7.2 it is Rockys' responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Rockys claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Rockys' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Rockys that the site is ready.
- 7.3 Delivery of the Goods/Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 7.4 At Rockys sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.5 Rockys may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by Rockys for delivery of the Services is an estimate only and Rockys will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that Rockys is unable to supply the Services as agreed solely due to any action or inaction of the Client, then Rockys shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.
- 8. Cooling Off Period**
- 8.1 For unsolicited sales, the client will be given ten business days after signing the contract to cancel the contract without penalty (the "cooling off period").
- 8.2 Where a client wishes to withdraw from a valid contract after the expiry of any cooling off period, Rockys are entitled to charge a cancellation fee to recover costs related to the cancelled Goods.
- 9. Refunds**
- 9.1 Once the client has entered into an agreement with Rockys any variation to the Goods provided will be documented and signed off by the client prior to installation.
- 9.2 Rockys will provide the client with a full refund on request when
- (a) the Goods provided are significantly different to that quoted at the point of contract and not signed off by the client prior to delivery.
 - (b) a site-specific design and performance estimate were not provided prior to or within the cooling off period and/or the client did not agree to the information provided
 - (c) the estimated delivery timeframe for installation completion that was agreed to upon acceptance of the contract for any reason reasonably within Rockys' control and the client does not consent to a new timeframe

- (d) Rockys does not obtain grid connection approval on behalf of the client prior to installation and the client does not receive approval from the distributor to connect the system
- (e) Extra chargeable work arises which was not specified in the initial contract, and additional costs are not borne by Rockys and the client does not consent to the additional costs.

10. Risk

- 10.1 If Rockys retains ownership of the Goods under clause 17 then:
 - (a) where Rockys is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Goods at Rockys address; or
 - (ii) the Goods are delivered by Rockys or Rockys nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Rockys is to both supply and install Goods then Rockys shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests Rockys to leave Goods outside Rockys premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 10.3 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, cabling, etc.) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing, crawl spaces or inspection points), Rockys reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then Rockys shall be entitled to delay installation of the Goods (**in accordance with the provisions of clause 7.2 above**) until Rockys is satisfied that it is safe for the installation to proceed.
- 10.4 Where the Client has supplied materials for Rockys to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Rockys shall not be responsible for any defects in the materials, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 10.5 The Client acknowledges that Rockys is only responsible for parts that are replaced by Rockys, and in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify Rockys against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 10.6 The Client acknowledges and agree that where Rockys has performed temporary repairs that:
 - (a) Rockys offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) Rockys will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.
- 10.7 The Client acknowledges that Goods supplied may:
 - (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 10.8 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 10.9 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 4.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 10.10 The final location of the wall, window or floor unit must be determined on site by the Client.
- 10.11 Rockys shall upon installation ensure that all installed Goods meet current industry standards applicable to noise levels, however Rockys cannot guarantee that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 10.12 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 10.13 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 10.14 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Rockys immediately upon any proposed changes. The Client agrees to indemnify Rockys against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.
- 10.15 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by Rockys, then Rockys shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.
- 10.16 Any live work or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". Rockys live work procedures are designed to eliminate risk of injury to Rockys employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be invoiced in accordance with clause 5.2.

11. Specifications

- 11.1 The Client acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Rockys or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled

to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Rockys;

- (b) while Rockys may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Rockys has given these in good faith, and are estimates based on Clean Energy Council (CEC) or other industry prescribed estimates.
- (c) the energy generation may be less than estimates due to factors out of Rockys control (including, but not limited to, hours of sunlight, cloud cover, weather patterns, the location (geographical or otherwise) of the Goods and the location of surrounding structures and flora;
- (d) some buildings may not have the optimum orientation for the installation of the Goods or components, and therefore understands and accepts that the Goods performance may be compromised in such situations.

11.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

12. Accuracy of Client's Plans and Measurements

12.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless Rockys and the Client agree otherwise in writing.

12.2 Rockys shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Rockys accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

13. Access

13.1 The Client shall ensure that Rockys has clear and free access to the worksite at all times to enable them to deliver the Services. Rockys shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Rockys.

13.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving or lifting equipment as may be deemed necessary by Rockys.

14. Underground Locations

14.1 Prior to Rockys commencing the Services the Client must advise Rockys of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

14.2 Whilst Rockys will take all care to avoid damage to any underground services the Client agrees to indemnify Rockys in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 14.1.

15. Compliance with Laws

15.1 The Client and Rockys shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

15.2 The Client shall obtain (at the expense of the Client) all licenses, approvals and certifications that may be required for the Services.

15.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction and/or other applicable sites and any other relevant safety standards or legislation.

16. Compliance with Codes of Conduct

16.1 Rockys complies with the Clean Energy Council's Retailer Code of Conduct.

17. Title

17.1 Rockys and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Rockys all amounts owing to Rockys; and
- (b) the Client has met all of its other obligations to Rockys.

17.2 Receipt by Rockys of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

18. Personal Property Securities Act 2009 ("PPSA")

18.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

18.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Rockys for Services – that have previously been supplied and that will be supplied in the future by Rockys to the Client.

18.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Rockys may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 18.3(a)(i) or 18.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Rockys for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Rockys;

- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Rockys;
 - (e) immediately advise Rockys of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 18.4 Rockys and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 18.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 18.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 18.7 Unless otherwise agreed to in writing by Rockys, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 18.8 The Client must unconditionally ratify any actions taken by Rockys under clauses 18.3 to 18.5.
- 18.9 Subject to any express provisions to the contrary (including those contained in this clause 18) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

19. Security and Charge

- 19.1 In consideration of Rockys agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 19.2 The Client indemnifies Rockys from and against all Rockys costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Rockys rights under this clause.

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

- 20.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Rockys in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Rockys to inspect the Goods.
- 20.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 20.3 Rockys acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 20.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Rockys makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Rockys liability in respect of these warranties is limited to the fullest extent permitted by law.
- 20.5 If the Client is a consumer within the meaning of the CCA, Rockys liability is limited to the extent permitted by section 64A of Schedule 2.
- 20.6 If Rockys is required to replace the Goods under this clause or the CCA, but is unable to do so, Rockys may refund any money the Client has paid for the Goods.
- 20.7 If the Client is not a consumer within the meaning of the CCA, Rockys liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Client by Rockys at Rockys sole discretion;
(b) limited to any warranty to which Rockys is entitled, if Rockys did not manufacture the Goods;
(c) otherwise negated absolutely.
- 20.8 Subject to this clause 20, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 20.1; and
(b) Rockys has agreed that the Goods are defective; and
(c) the Goods are in as close a condition to that in which they were delivered as is possible.
- 20.9 Notwithstanding clauses 20.1 to 20.8 but subject to the CCA, Rockys shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Client failing to properly maintain or store any Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client failing to follow any instructions or guidelines provided by Rockys;
(e) fair wear and tear, any accident, or act of God.
- 20.10 Notwithstanding anything contained in this clause if Rockys is required by a law to accept a return then Rockys will only accept a return on the conditions imposed by that law.

21. Intellectual Property

- 21.1 Where Rockys has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Rockys. Under no circumstances may such designs, drawings and documents be used without the express written approval of Rockys.
- 21.2 The Client warrants that all designs, specifications or instructions given to Rockys will not cause Rockys to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Rockys against any action taken by a third party against Rockys in respect of any such infringement.
- 21.3 The Client agrees that Rockys may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Rockys has created for the Client.

22. Default and Consequences of Default

- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Rockys sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes Rockys any money the Client shall indemnify Rockys from and against all costs and disbursements incurred by Rockys in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Rockys contract default fee, and bank dishonour fees).
- 22.3 Further to any other rights or remedies Rockys may have under this contract, if a Client has made payment to Rockys, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Rockys under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 22.4 Without prejudice to Rockys other remedies at law Rockys shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Rockys shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Rockys becomes overdue, or in Rockys opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Rockys;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 23. Cancellation**
- 23.1 Without prejudice to any other remedies Rockys may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Rockys may suspend or terminate the supply of Goods to the Client. Rockys will not be liable to the Client for any loss or damage the Client suffers because Rockys has exercised its rights under this clause.
- 23.2 Rockys may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Rockys shall repay to the Client any money paid by the Client for the Goods. Rockys shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Rockys as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 24. Privacy Act 1988**
- 24.1 The Client agrees that personal information provided by the Client (e.g. name, address, date of birth, occupation, etc.) may be used and retained by Rocky for the provision of Services (and for other agreed purposes or required thereby).
- 24.2 The Client shall have the right to request (by e-mail) from Rocky:
- (a) a copy of the information about the Client retained by Rocky and the right to request that Rocky correct any incorrect information; and
 - (b) that Rocky does not disclose any personal information about the Client for the purpose of direct marketing.
- 24.3 Rocky will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 24.4 The Client can make a privacy complaint by contacting Rocky via e-mail. Rocky will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 25. Building and Construction Industry Security of Payment Act 2002**
- 25.1 At Rockys sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 25.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 26. General**
- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which Rockys has its principal place of business, and are subject to the jurisdiction of the courts in Sale, Victoria.
- 26.3 Subject to clause 20, Rockys shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Rockys of these terms and conditions (alternatively Rockys liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.4 Rocky may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 26.5 The Client cannot licence or assign without the written approval of Rocky.
- 26.6 Rocky may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Rockys sub-contractors without the authority of Rocky.
- 26.7 The Client agrees that Rockys may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Rockys to provide Goods to the Client.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.