



FORM 16 – RockSolid Screw Piling and Earthworks Trading Terms

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1. Definitions

- 1.1. **ACTA** means Application for a Commercial Trading Account.
- 1.2. **BIFSPA** means *Building Industry Fairness (Security of Payment) Act 2017* (Qld).
- 1.3. **CCA** means the *Competition and Consumer Act 2010* (Cth).
- 1.4. **Contract** means the Trading Terms and ACTA (if applicable), together with any:
 - 1.4.1. quotation;
 - 1.4.2. invoice; or
 - 1.4.3. other document;prepared by the Contractor and intended by the Contractor to form part of the Contract.
- 1.5. **Contractor** means BST Family Pty Ltd ACN 686 190 474 as trustee for BST Family Trust (t/a RockSolid Screw Piling & Earthworks) ABN 61 345 650 454, its successors and assigns or any person acting on behalf of and with the authority of it.
- 1.6. **Customer** means the person or entity, or any person acting on behalf of and with the authority of the Customer, requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
 - 1.6.1. if there is more than one Customer, is a reference to each Customer jointly and severally (including each partner in a partnership); and
 - 1.6.2. if the Customer is a trustee of a trust, is a reference to the Customer in both their individual capacity and their capacity as a trustee; and
 - 1.6.3. includes the Customer's executors, administrators, successors and permitted assigns.
- 1.7. **Force Majeure Event** means any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any government imposed border lockdowns (including on worldwide destination ports).
- 1.8. **GST** has the same meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.9. **Intended Use** means the use for which the product is intended to be, or is reasonably likely to be, used.
- 1.10. **Materials** means all materials supplied by the Contractor to the Customer at the Customer's request from time to time.
- 1.11. **Non-Conforming Products** means products that are regarded as non-conforming for an Intended Use, including if:
 - 1.11.1. the product is not, or will not be, safe; or
 - 1.11.2. does not, or will not, comply with the relevant regulatory provisions; or
 - 1.11.3. the product does not perform, or is not capable of performing, the Intended Use to the standard expected of products used for the Intended Use.
- 1.12. **Non-Excluded Guarantees** means certain guarantees and warranties (including, without limitation, guarantees under the CCA) that are implied by statute.
- 1.13. **Purchase Money Security Interest** has the meaning given in the PPSA.
- 1.14. **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 1.15. **PPSR** means the Personal Property Securities Register.
- 1.16. **Price** means the Price payable for the Works as agreed between the Contractor and the Customer in accordance with clause 6.

- 1.17. **Trading Terms** means the terms and conditions contained in this document.
- 1.18. **Works** means all works or services (including consultation, manufacturing and/or installation services) undertaken, performed or supplied (including the supply of any Materials) by the Contractor to the Customer at the Customer's request from time to time.
- 1.19. **Worksite** means the address nominated by the Customer to which the Works are to be supplied by the Contractor.
- 2. Acceptance**
 - 2.1. The parties acknowledge and agree that:
 - 2.1.1. they have read and understood these Trading Terms; and
 - 2.1.2. the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these Trading Terms if the Customer places an order for or accepts delivery of the Works.
 - 2.2. In the event of any inconsistency between these Trading Terms and any other prior document or schedule that the parties have entered into, the terms of the Contract will prevail.
 - 2.3. Any amendments to these Trading Terms will only be valid if consented to in writing by all parties.
 - 2.4. Unless clause 2.3 applies, the Contract expressly excludes any terms or conditions of, or prepared by, the Customer.
 - 2.5. The Customer acknowledges and accepts that the supply of Works on credit will not take effect until the Customer has completed, and the parties have signed, an ACTA and the Customer has been approved with a credit limit for the account.
 - 2.6. Where an ACTA is signed by the parties and the Customer has been approved with a credit limit for the account, these Trading Terms are supplemented by the terms in the ACTA.
 - 2.7. If the supply of Works requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse the supply of the Works.
 - 2.8. Any advice, recommendation, information, assistance or service provided by the Contractor in relation to the Works is given in good faith to the Customer, or the Customer's agent and is based on the Contractor's own knowledge and experience and will be accepted by the Customer without liability on the part of the Contractor. Where that advice or recommendations are not acted upon, then the Contractor will require the Customer or their agent to authorise commencement of the Works in writing. The Contractor will not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works in those circumstances.
 - 2.9. Where the Customer requesting or organising the Contractor to provide the Works is acting on behalf of any third party, and that third party is intended to be responsible for either the full or partial payment of the Price, then the Customer acknowledges that they remain liable for the full payment of the Price as if they had contracted the Works for their own behalf.
 - 2.10. The Customer acknowledges and agrees that in the event the Contractor requires access, in order to undertake the Works to an adjoining or adjacent property or land to the nominated Worksite, that is not owned by the Customer, then it is the Customer's responsibility to gain permission from the landowner to use the above mentioned property throughout the process or delivering the Works. In the event the landowner



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denies access or use of the land or property, the Customer will be liable for all costs incurred by the Contractor in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

- 2.11. For the purposes of the *Electronic Transactions (Queensland) Act 2001* (Qld), the parties consent to information being given by electronic communication methods.

3. Authorised Representatives

- 3.1. Unless otherwise limited by clause 3.2, the Customer agrees that should the Customer introduce any third party to the Contractor as the Customer's duly authorised representative, that once introduced, that person will have the full authority of the Customer to:

- 3.1.1. order any Materials or Works on the Customer's behalf; and/or
- 3.1.2. request any variation to the Works on the Customer's behalf;

and that authority will continue until all requested Works have been completed or the Customer otherwise notifies the Contractor in writing that the authorised person is no longer the Customer's duly authorised representative.

- 3.2. In the event that the Customer's duly authorised representative under clause 3.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.

- 3.3. The Customer specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Materials, Works or variation/s requested by the Customer's duly authorised representative (subject to clause 3.2 (if applicable)).

4. Errors and Omissions

- 4.1. The Customer acknowledges and accepts that the Contractor will, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- 4.1.1. resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of the Contract; and/or
 - 4.1.2. contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.
- 4.2. In circumstances where the Customer is required to place an order for Materials, in writing or otherwise as permitted by these Trading Terms, the Customer is responsible for supplying correct order information including, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order Materials or not). The Customer must pay for all Materials it orders from the Contractor, notwithstanding that those Materials suffer from any error arising from the information supplied by the Customer or that the Customer has not taken or refuses to take delivery of those Materials. The Contractor is entitled to, at its sole discretion, waive its right under this clause 4.2 in relation to any errors made by the customer in the provision of the relevant information necessary to order the correct Materials.

5. Change in Control

- 5.1. The Customer will give the Contractor not less than 14 days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's name, address, phone number, email address, trustee, or business practice). The Customer will be liable for any loss incurred by the Contractor because of the Customer's failure to comply with this clause.

6. Price and Payment

- 6.1. At the Contractor's sole discretion, the Price will be either:
- 6.1.1. as indicated on invoices provided by the Contractor to the Customer in respect of Works performed or upon placement of an order for the Materials; or
 - 6.1.2. the Contractor's quoted Price (subject to clause 6.2), which will be binding upon the Contractor provided that the Customer has accepted the Contractor's quotation in writing within thirty (30) days of its issue.
- 6.2. The Contractor reserves the right to change the Price:
- 6.2.1. if a variation to the Materials which are to be supplied is requested; or
 - 6.2.2. if a variation to the Works originally scheduled (including any applicable plans, specifications, scope of Works, or service locator) is requested; or
 - 6.2.3. where additional Works are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to:
 - 6.2.3.1. poor weather;
 - 6.2.3.2. limitations to accessing the Worksite;
 - 6.2.3.3. obscured building or Worksite defects;
 - 6.2.3.4. incorrect measurements, plans and/or specifications provided by the Customer;
 - 6.2.3.5. delays from third party suppliers;
 - 6.2.3.6. safety considerations (for example, discovery of asbestos in or near the Worksite);
 - 6.2.3.7. prerequisite work by any third party not being completed;
 - 6.2.3.8. lack of required utilities;
 - 6.2.3.9. remedial work required due to existing workmanship being of a poor quality or noncompliant to any relevant laws; or
 - 6.2.3.10. hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring; or
 - 6.2.4. in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's reasonable control.
- 6.3. Variations will be charged on the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Customer must respond to any variation submitted by the Contractor within 10 days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment of all variations must be made in full at the time of the completion of the variation works.
- 6.4. At the Contractor's sole discretion, a non-refundable deposit may be required upon placement of an order for Materials or Works, in accordance with any quotation provided by the Contractor or as notified to the Customer prior to the placement of an order for Materials or Works.



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- 6.5. The Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
- 6.5.1. on completion of the Works; or
 - 6.5.2. by way of progress payments in accordance with the Contractor's specified progress payment schedule. The progress payment claims may include the reasonable value of authorised variations, and the value of any Materials delivered to the Worksite but not yet installed; or
 - 6.5.3. the date specified on any invoice or other form as being the date for payment; or
 - 6.5.4. failing any notice to the contrary, the date which is 14 days following the date of any invoice given to the Customer by the Contractor.
- 6.6. Payment is to be made by electronic banking, or by any other method agreed by both the Customer and the Contractor.
- 6.7. The Contractor may in its sole discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer, the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest in the Materials.
- 6.8. The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Contractor in writing within 3 days; the invoice will remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim and no credit will be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Customer's account into default and subject to default interest in accordance with clause 19.1.
- 6.9. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other Contract for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.
- 7. Provision of the Works**
- 7.1. Subject to clauses 7.2 and 7.3, it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2. The Customer must, prior to the Works' commencement date:
- 7.2.1. have the Worksite ready for the Works, including ensuring that the Worksite is safe, accessible, and clear of any obstructions that may interfere with the works; and
 - 7.2.2. notify the Contractor that the Worksite is ready
- 7.3. The Works' commencement date will be pushed back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's reasonable control, including but not limited to any failure by the Customer to:
- 7.3.1. make a selection; or
 - 7.3.2. have the Worksite ready for the Works; or
 - 7.3.3. notify the Contractor that the Worksite is ready.
- 7.4. The Customer will take delivery of the Materials tendered notwithstanding that the quantity so delivered will be either greater or less than the quantity purchased provided that:
- 7.4.1. such discrepancy in quantity will not exceed 5%; and
 - 7.4.2. the Price will be adjusted pro rata to the discrepancy or to the value that has been delivered.
- 7.5. Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they will make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. If the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then the Contractor will be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8. Risk**
- 8.1. If the Contractor retains ownership of the Materials under clause 14 then:
- 8.1.1. where the Contractor is supplying Materials only, all risk for the Materials will immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. The cost of delivery will be payable by the Customer in accordance with the quotation provided by the Contractor to the Customer, or as otherwise notified to the Customer prior to the placement of an order for the Materials. Delivery of the Materials will be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address); or
 - 8.1.2. where the Contractor is to both supply and install Materials, then the Contractor will maintain a Contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works will immediately pass to the Customer.
- 8.2. Notwithstanding the provisions of clause 8.1, if the Customer specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location, then those Materials will always be left at the sole risk of the Customer and it will be the Customer's responsibility to ensure the Materials are insured adequately. If those Materials are lost, damaged or destroyed, then replacement of the Materials will be at the Customer's expense.



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- 8.3. In the event the Customer gives information relating to the Materials or Works (including plans, specifications, CAD drawings, measurements, quantities, and other information provided by the Customer):
- 8.3.1. that it is the Customer's responsibility to verify the accuracy of the information before the Customer, or the Contractor, places an order based on the information. The Contractor accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause; and
- 8.3.2. the Contractor will be entitled to rely on the accuracy of that information. The Customer acknowledges and agrees that in the event that any of the information provided by the Customer is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting therefrom, including any variation to the Works or Materials required due to inaccurate information provided by the Customer, such additional Works and Materials will be charged in accordance with clause 6.2.
- 8.4. The Customer warrants that any structures (where applicable) to which the Materials are to be affixed can withstand the installation of the Materials and are of a suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos) the Contractor, or employees of the Contractor, reasonably form the opinion that the Worksite is not safe for the installation of Materials to proceed then the Contractor will be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.3 above) until the Contractor is satisfied that it is safe for the installation to proceed.
- 8.5. All potential surfaces are subject to an inspection by the Contractor prior to the commencement of the Works. If the surface is deemed unsuitable, then the Contractor reserves the right to halt the Works until such time as the Contractor and the Customer agree in writing as to the additional costs in further preparation of the surface to make it fit for the Works to commence. The additional costs will be charged as a variation to the Price in accordance with clause 6.2.
- 8.6. The Customer accepts and acknowledges that the Contractor accepts no liability for any:
- 8.6.1. subsequent loss or damage (including, but not limited to, reinstatement Works) to the Customer's existing structures which may occur during the provision of the Works, where such loss or damage is due to preexisting faults; and
- 8.6.2. defect in the Works (including, but not limited to, any loss or damage to the Works that is caused by any other tradesmen during and after the completion of the Works or delays caused by any other third-party suppliers that impacts on the provision of the Works by the Contractor).
- 9. Disturbance of Trees**
- 9.1. Prior to commencement of the Works by the Contractor, it will be the Customer's responsibility to investigate local laws in relation to the pruning and/or removal of trees required as part of the Works. Temporary fences may need to be erected around the circumference of the tree, and if so, the Customer will arrange the erection in conjunction with the Contractor.
- 9.2. Notwithstanding clause 9.1, the Customer acknowledges and agrees to advise the Contractor prior to commencement of any Works where the removal of any trees may be subject to a protection order and/or on a heritage list and warrants to ensure that the Contractor's Works will comply with the relevant restrictions, legislation and/or by-laws. The Contractor will not be liable for any loss, expense or damage suffered by the Customer in relation to the Works resulting from the Customer's non-compliance with this clause.
- 9.3. The Contractor reserves the right to refuse to continue to complete the Works in the event that the Contractor believes the Worksite or any trees to be unsafe to either the Contractor's employees and/or the Customer's property. In this event, the Customer accepts the Contractor's right to delay the provision of the Works (in accordance with clause 7.3) and make the Worksite safe before the Contractor will continue the Works. The Customer agrees to indemnify the Contractor against all additional costs incurred in such an event, all additional costs will be detailed separately at the time of invoicing in accordance with clause 6.2. The Contractor will not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe Worksite.
- 10. Earthmoving**
- 10.1. The Customer acknowledges that, under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
- 10.1.1. the Contractor will suspend the Works;
- 10.1.2. the Customer will be fully responsible for the resolution of any resulting problems; and
- 10.1.3. any additional cost incurred by the Contractor will be added to the Price under clause 6.2.
- 10.2. If whilst undertaking the Works the Contractor discovers any fossils, artifacts or any other remains of geological or archaeological interest, the Contractor reserves the right to halt all Works, remove any of their equipment from the Worksite and immediately notify the Customer. The Customer accepts and agrees that all additional costs that may be incurred by the Contractor as a result of a delay of this type (including, but not limited to, the Contractor being unable to remove their equipment from the Worksite) will be borne by the Customer and will be treated as a variation in accordance with clause 6.2.
- 11. Worksite Access and Condition**
- 11.1. The Contractor is not responsible for the removal of rubbish from or cleanup of the Worksite. All rubbish generated by the Contractor will be placed in a designated area appointed by the Customer, but the responsibility for the removal of same remains with the Customer or the Customer's agent, unless otherwise agreed.
- 11.2. It is agreed by the parties that:
- 11.2.1. the Customer must ensure that the Contractor has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Contractor will not be liable for any loss

or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor; and

11.2.2. it is the Customer's responsibility to:

- 11.2.2.1. ensure that access is suitable to accept the weight of laden trucks, or other heavy equipment as may be deemed necessary by the Contractor. The Customer agrees to indemnify the Contractor against all costs incurred by the Contractor in recovering such vehicles in the event they become bogged or otherwise immovable;
- 11.2.2.2. remove any furniture, furnishings or personal goods from the vicinity of the Worksite and agrees that the Contractor will not be liable for any damage caused to those items through the Customer's failure to comply with this clause;
- 11.2.2.3. obtain all permits and permissions relating to tree removal and/or trimming of trees, (including, but not limited to, council approval, parking, road closures, traffic management, traffic control plans, standing of equipment and operation of equipment on the road and or pedestrian pathway). Failure to comply with this clause that results in any fines incurred will be borne by the Customer; and
- 11.2.2.4. provide the Contractor with facilities, as specified by the Contractor (including, but not limited to, suitable free power sources and toilet facilities), for the duration that the Works are undertaken.

11.3. The Customer agrees to be present at the Worksite when and as reasonably requested by the Contractor and its employees, contractors and/or agents.

11.4. In the event the Customer requires an employee or sub-contractor of the Contractor to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the Works' commencement date then the Customer will be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate

11.5. Where the Contractor is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out the Contractor's Health and Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and, unless otherwise agreed, the Customer and/or a third party acting on behalf of the Customer must at all times be accompanied by the Contractor.

12. Underground Locations

12.1. Unless otherwise agreed in writing between the Customer and the Contractor, it will be the Customer's responsibility to advise the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Customer 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 the Worksite.

12.2. If the Customer requests the Contractor to engage a service locator, then this will be in addition to the Price and "Dial Before You Dig" must be consulted and any potential underground services marked on the Worksite.

12.3. Whilst the Contractor will take all care to avoid damage to any underground services, the Customer agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage and costs.

13. Compliance with Laws

13.1. The Customer and the Contractor will comply with the provisions of all statutes, regulations and by-laws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.

13.2. Both parties acknowledge and agree:

13.2.1. to comply with the *National Construction Code* and the *QBCC Act 1991* (Qld), in respect of all workmanship and building products to be supplied during the course of the Works; and

13.2.2. that Works will be provided in accordance with any current relevant Australian standards (as applicable).

13.3. Where the Customer has supplied products for the Contractor to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the materials supplied are Non-Conforming Products or will not otherwise conform with the relevant state and/or territory laws, then the Contractor will be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with those changes will be invoiced in accordance with clause 6.2.

13.4. The Customer will obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

14. Title

14.1. The Contractor and the Customer agree that ownership of the Materials will not pass until:

14.1.1. the Customer has paid the Contractor all amounts owing to the Contractor; and

14.1.2. the Customer has met all its other obligations to the Contractor.

14.2. Receipt by the Contractor of any form of payment other than cash will not be deemed to be payment until that form of payment has cleared in the Contractor's bank account.

14.3. It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 14.1:

14.3.1. the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request;

14.3.2. the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any

insurance in the event of the Materials being lost, damaged or destroyed;

- 14.3.3. the production of these Trading Terms by the Contractor will be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries;
- 14.3.4. the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
- 14.3.5. the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
- 14.3.6. unless the Materials have become fixtures the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials;
- 14.3.7. the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;
- 14.3.8. the Customer will not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor; and
- 14.3.9. the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

15. PPSA

- 15.1. In this clause, "financing statement", "financing change statement", "security agreement", and "security interest" all have the meaning given to them in the PPSA.
- 15.2. The Customer acknowledges and agrees that these Trading Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral – being a monetary obligation of the Customer to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 15.3. The Customer undertakes to:
 - 15.3.1. promptly sign any further documents and/or provide any further information (with that information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
 - 15.3.1.1. register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - 15.3.1.2. register any other document required to be registered by the PPSA; or
 - 15.3.1.3. correct a defect in a statement referred to in clause 15.3.1.1 or 15.3.1.2.

- 15.3.2. indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any Materials charged thereby;
- 15.3.3. not register a financing change statement in respect of a security interest without the prior written consent of the Contractor; and
- 15.3.4. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral in favour of a third party without the prior written consent of the Contractor.

- 15.4. The Contractor and the Customer agree that sections 96 and 125 of the PPSA do not apply to the security agreement created by these Trading Terms.
- 15.5. The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6. The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7. Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8. The Customer will unconditionally ratify any actions taken by the Contractor under this clause 15.
- 15.9. Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these Trading Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1. In consideration of the Contractor agreeing to supply the Materials and/or provide its Works, the Customer grants the Contractor a security interest by way of a floating charge (registerable by the Contractor pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under the Contract for provision of the Materials and/or Works under the Contract and/or permit the Contractor to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 16.2. The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on an indemnity basis incurred in exercising the Contractor's rights under this clause 16.
- 16.3. In the event that the Customer defaults or breaches any term of the Contract, and as a result the security provided in clauses 14.1, 15.2 and 16.1 (as applicable) is deemed insufficient by the Contractor to secure the repayment of monies owed by the Customer to the Contractor, the Customer hereby grants the Contractor a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these Trading Terms (including, but not limited to, the payment of any money owing to the Contractor).

17. Defects, Warranties and Returns

- 17.1. The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Contractor to inspect the Materials or to review the Works provided.
- 17.2. Under applicable State, Territory and Commonwealth Law (including, without limitation, the CCA), Non-Excluded Guarantees may be implied into these Trading Terms.
- 17.3. The Contractor acknowledges that, where the Non-Excluded Guarantees are not permitted by law to be modified or excluded by agreement by the parties, nothing in these Trading Terms purports to modify or exclude the Non-Excluded Guarantees.
- 17.4. Except as expressly set out in these Trading Terms or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these Trading Terms including but not limited to, the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5. If the Customer is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 17.6. If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Customer has paid for the Materials.
- 17.7. If the Contractor is required to rectify, re-supply, or pay the cost of resupplying the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Customer has paid for the Works but only to the extent that such refund will take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 17.8. If the Customer is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:
 - 17.8.1. limited to the value of any express warranty or warranty card provided to the Customer by the Contractor at the Contractor's sole discretion;
 - 17.8.2. limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials; and/or
 - 17.8.3. otherwise negated absolutely.
- 17.9. Subject to this clause 17, returns will only be accepted provided that:
 - 17.9.1. the Customer has complied with the provisions of clause 17.1; and
 - 17.9.2. the Contractor has agreed that the Materials are defective; and
 - 17.9.3. the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - 17.9.4. the Materials are returned in as close a condition to that in which they were delivered as is possible.

- 17.10. Notwithstanding clauses 17.1 to 17.9, but subject to the CCA, the Contractor will not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - 17.10.1. the Customer failing to properly maintain or store any Materials;
 - 17.10.2. the Customer using the Materials for any purpose other than that for which they were designed;
 - 17.10.3. the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - 17.10.4. interference with the Works by the Customer or any third party without the Contractor's prior approval;
 - 17.10.5. the Customer failing to follow any instructions or guidelines provided by the Contractor; and/or
 - 17.10.6. fair wear and tear, any accident, or act of God.
- 17.11. The Contractor may in its absolute discretion accept non-defective Materials for return in which case the Contractor may require the Customer to pay handling fees of up to 30% of the value of the returned Materials plus any freight costs.
- 17.12. Notwithstanding anything contained in this clause, if the Contractor is required by a law to accept a return, then the Contractor will only accept a return on the conditions imposed by that law.
- 17.13. Subject to clause 17.1, customised, or non-stocklist items or Materials made or ordered to the Customer's specifications are not acceptable for credit or return.

18. Intellectual Property

- 18.1. Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products will remain vested in the Contractor, and will only be used by the Customer at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
 - 18.2. The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
 - 18.3. The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Customer.
- ## 19. Default and Consequences of Default
- 19.1. Interest on overdue invoices will accrue daily from the date when payment becomes due, until the date of payment, at a rate of 1% per calendar month (and that interest will compound monthly) after, as well as before, any judgment.
 - 19.2. If the Customer owes the Contractor any money, the Customer will indemnify the Contractor from and against all costs and disbursements (on an indemnity basis):
 - 19.2.1. incurred; and/or
 - 19.2.2. which would be incurred and/or
 - 19.2.3. for which the Customer would be liable;



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regarding the Contractor's exercise, or purported exercise, of rights under these Trading Terms, internal administration fees, the Contractor's Contract fees owing for breach of these Trading Terms, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

- 19.3. Further to any other rights or remedies the Contractor may have under the Contract, if a Customer has made payment to the Contractor, and the transaction is subsequently reversed, the Customer will be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under the Contract.
- 19.4. Without prejudice to the Contractor's other remedies at law the Contractor will be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor will, whether or not due for payment, become immediately payable if:
- 19.4.1. any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
 - 19.4.2. the Customer defaults under any term of the Contract and does not remedy that default within 14 days of receiving notice from the Contractor to remedy that default;
 - 19.4.3. the Customer has exceeded any applicable credit limit provided by the Contractor;
 - 19.4.4. the Customer becomes insolvent or bankrupt, 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
 - 19.4.5. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. Cancellation

- 20.1. Without prejudice to any other remedies the parties may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these Trading Terms, the Contractor may suspend or terminate the supply or purchase of Materials and/or Works to the Customer, with immediate effect, by providing the Customer with written notice. The Contractor will not be liable for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 20.2. Subject to clause 7.3, if the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to deliver any Materials and/or Works to the Customer within a reasonable time of the Works' commencement date, the Contractor may cancel any Contract to which these Trading Terms apply or cancel delivery of Materials and/or Works at any time before the Materials and/or Works are delivered by giving written notice to the Customer. On giving such notice the Contractor will repay to the Customer any money paid by the Customer for the Materials and/or Works. The Contractor will not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3. The Customer may cancel delivery of the Materials and/or Works by written notice served within 48 hours of placement of the order. If the Customer cancels delivery in accordance with

this clause 20.3, the Customer will not be liable for the payment of any costs of the Contractor, except for any deposit that has been paid in accordance with clause 6.4. Failure by the Customer to otherwise accept delivery of the Materials and/or Works will place the Customer in breach of this Contract.

- 20.4. Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

21. Privacy Policy

- 21.1. The Contractor's Privacy Policy (available on request or on the the website www.rocksolidscrowpiling.com) applies to these Trading Terms.

22. Credit Reporting Policy and Statement of Notifiable Matters

- 22.1. The Contractor's Credit Reporting Policy and Statement of Notifiable Matters (available on request or on the the website www.rocksolidscrowpiling.com) applies to these Trading Terms.

23. Service of Notices

- 23.1. Any written notice given under the Contract will be deemed to have been given and received:
- 23.1.1. by handing the notice to the other party, in person;
 - 23.1.2. by leaving it at the last known address of the other party;
 - 23.1.3. by sending it by registered post to the last known address of the other party; and
 - 23.1.4. by sending it by email to the last known email address of the other party, unless the sender receives notice that the email has not transmitted to the recipient.
- 23.2. Any notice that is posted will be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered. A notice sent by email is served on the day it is sent.

24. Trusts

- 24.1. If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust, then whether or not the Contractor may have notice of the trust, the Customer covenants with the Contractor as follows:
- 24.1.1. the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the trust, the trustees and the trust fund;
 - 24.1.2. the Customer has full and complete power and authority under the trust or from the trustees of the trust, as the case may be, to enter into the Contract and the provisions of the trust do not purport to exclude or take away the right of indemnity of the Customer against the trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and
 - 24.1.3. the Customer will not during the term of the Contract without consent in writing of the Contractor (which consent must not be unreasonably withheld), cause, permit, or suffer to happen any of the following events:
 - 24.1.3.1. the removal, replacement or retirement of the Customer as trustee of the trust;



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- 24.1.3.2. any alteration to or variation of the terms of the trust;
- 24.1.3.3. any advancement or distribution of capital of the trust; or
- 24.1.3.4. any resettlement of the trust fund or trust property.

25. BIFSPA

- 25.1. At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works, then the provisions of the BIFSPA may apply.
- 25.2. Nothing in the Contract is intended to have the effect of contracting out of any applicable provisions of the BIFSPA, except to the extent permitted by the BIFSPA (where applicable).

26. General

- 26.1. Any dispute or difference arising as to the interpretation of these Trading Terms or as to any matter arising herein, will be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties will share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties will be free to pursue other dispute resolution avenues.
- 26.2. The failure by either party to enforce any provision of these Trading Terms will not be treated as a waiver of that provision, nor will it affect that party's right to subsequently enforce that provision.
- 26.3. If any provision of these Trading Terms is held to be invalid, void, illegal or unenforceable, that provision will be severed from the Contract, and the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 26.4. These Trading Terms and any Contract to which they apply will be governed by the laws of Queensland and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 26.5. The Contractor may licence and/or assign all or any part of its rights and/or obligations under the Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 26.6. The Customer cannot licence or assign its rights and/or obligations under the Contract without the written approval of the Contractor.
- 26.7. The Contractor may elect to subcontract out any part of the Works but will not be relieved from any liability or obligation under the Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Contractor's subcontractors without the authority of the Contractor.
- 26.8. The Customer agrees that the Contractor may amend these Trading Terms for subsequent future contracts with the Customer by disclosing that to the Customer in writing. These changes will be deemed to take effect from the date on which the Customer accepts those changes, or otherwise at such time as the Customer makes a further request for the Contractor to provide Works to the Customer.

- 26.9. Neither party will be liable to the other for any default due to any Force Majeure Event or other event beyond the reasonable control of the defaulting party. This clause does not apply to a failure by the Customer to make a payment to the Contractor, once the Force Majeure Event has ceased.
- 26.10. Both parties warrant that they have the power to enter into the Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that the Contract creates binding and valid legal obligations on them.
- 26.11. The rights and obligations of the parties will not merge on completion of any transaction under the Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under the Contract.