

# Rochele Painting Terms and Conditions

## 1. Application of terms and conditions

These terms and conditions (which incorporate the Quotation Form) comprise the entire agreement between Prompt & Professional Pty Ltd ACN 609 901 368 trading as Rochele Painting ("we", "us" or "our") and the person, company or other entity identified as the Customer in the Quotation Form ("you" or "your") for the performance of the Works by us.

## 2. The Works

In consideration for you paying to us the Price in the manner and at the times set out in the Quotation Form, we will perform the Works in accordance with these terms and conditions.

## 3. Working hours and Site Access

**3.1** We will perform the Works during our normal working hours of 7.30am to 3.30pm. If you require us to perform the Works outside of our normal working hours, or access to the Site is restricted in a way which means we cannot perform the Works during our normal working hours, this will be deemed to be a variation and clause 11 shall apply.

**3.2** The Customer Representative you have nominated must be able to:

- provide us, and our equipment, with access to the Site to carry out the Works, including gaining access to any locked or restricted access areas at the Site; and
- co-ordinate, to our reasonable requirements, the performance of any other works at the Site or occupation of the Site by others to enable us to carry out the Works.

## 4. Payment terms

**4.1** You must pay the Price as set out in the Quotation Form. Unless otherwise expressly stated in the Quotation Form, the Price is exclusive of GST.

**4.2** We will invoice you for Progress Payments and the Final Payments at the times specified in the Quotation Form. If there are no Progress Payments specified in the Quotation Form, we may, in our absolute discretion, issue monthly invoices for Works completed and materials ordered to perform the Works in that month.

**4.3** Invoices must be paid within 5 business days of the date of issue. If you do not pay an invoice by such date, you acknowledge and agree that you may be liable for late payment fees or charges, which may include all reasonable costs incurred by us in seeking to recover payment (such as legal fees and engaging a debt recovery agency). All invoices must be paid without any deduction or set off. The existence of any dispute or claim in relation to the Works is not a valid reason for withholding or delaying the payment of any invoice.

## 5. Site Conditions

**5.1** You acknowledge that the Price is based on the Site being free from latent defects or conditions which may affect the Works and being in the same condition as the date of issue of the quote. If we, acting reasonably, consider that latent defects or conditions or changed site conditions affect the performance of the Works, this will be deemed to be a variation and clause 11 shall apply.

**5.2** Unless specifically included in the description of Works in the Quotation Form, no allowance has been made for Site induction or training. Any time we spend attending Site inductions or training required in order for us to gain access to the Site will incur additional costs based on a reasonable hourly rate per person (nominated by us) and will be payable by you (in addition to the Price).

**5.3** You will provide suitable Site amenities (including power, water and toilet facilities) and, if requested by us, Site storage facilities, at no cost to us.

## 6. Substrate and surface conditions

**6.1** You acknowledge that the extent of surface preparation included in the scope of the Works is limited to sanding or scraping to the previous coat (if applicable) and filling minor surface depressions to create a flush surface. Unless specifically stated in the description of the Works in the Quotation Form, the Works exclude rectification of faults or defects in the building structure or substrate condition, delaminating previous coatings and repairs or replacement (in whole or in part) of existing substrate surfaces.

**6.2** If we determine that substrate, surface or structural repairs or replacements (including the removal of any lead paint, asbestos or other hazardous material) should be undertaken prior to carrying out any part of the Works, we will notify you. We may suspend performance of the Works pending completion of such repairs or replacements being carried out by you or persons engaged by you at your cost. We will not be responsible for any delay in performance of the Works as a result of any substrate, surface or structural repairs or replacements we determine should be undertaken. If we notify you that substrate, surface or structural repairs or replacements should be undertaken and you decline to do so:

- we may terminate our obligation to perform the Works if, in our view, failing to carry out the repairs or replacements may endanger the health or safety of us or any other person or any property and we may issue an invoice for that part of the Works which have been performed and materials supplied up to the date of such termination; or
- if you request that we continue performing the Works, we will only do so on the basis that the warranty in clause 9 does not apply to any of the Works performed at the Site, you release us for any claim that may arise out of, or in connection with, our performance of the Works and indemnify from any loss or damage we may suffer (including by way of claim from any third party) in performing the Works.

## 7. Delays

**7.1** The Price is based on the understanding that the Works will be carried out as one continuous project, without delay, with the provision of equipment and services by third parties and access to the Site as and when needed. Any delays due to reasons outside our reasonable control which result in additional costs or labour (including but not limited to inclement weather, industrial action, Site inaccessibility or delays caused by your act or omission) will be assessed by us and charged to you at applicable hourly rates (in addition to the Price).

**7.2** If for any reason the Works are not completed by the estimated time for completion, we will provide you with a revised estimate for timing of completion of the Works.

## 8. Colour selection

You are solely responsible for paint colour selection. We will perform the Works using paint colours directed by you in writing. Such written direction may be provided to us directly or by a designer or colour consultant retained by you or by us, provided that the direction in all cases has been signed by you. You acknowledge that the final colour may differ from colour swabs, electronic images or other samples owing to natural factors which contribute to colour variations such as light and the age of the surface painted. It is your responsibility to test and verify your colour selections through the use of sample pots before we commence the Works.

## 9. Warranty

**9.1** Subject to clauses 9.2 and 9.3, we warrant against peeling or flaking paint and defective workmanship:

- in respect of Works on or involving roofs, floors and handrails for a period of 12 months from the completion of those Works;
- in respect of all other Works for a period of 24 months from the completion of the Works; and
- on the basis that our liability for peeling or flaking paint or defective workmanship under this clause is limited to the rectification by repair or re-performance (at our election) at our cost of the peeling or flaking paint or defective workmanship only.

**9.2** You may only claim against the warranty provided under clause 9.1 if:

- you have paid the Price in full;
- you have given us written notice of your intention to claim against the warranty within 14 days of the alleged defect first coming to your attention;
- the alleged defect or defects are not excluded under the terms of any warranty provided by the manufacturer of the paint products used in the performance of the Works; and
- us concluding, to our satisfaction acting reasonably, that the alleged defect does not arise out of, in connection with or in the vicinity of any latent Site conditions or Site risks (such as structural, building design, environmental conditions or Site risks identified in the Quotation Form), substrate or surface conditions (such those set out in clause 9.3), in areas of the Site noted in the Quotation Form as inaccessible during the Site inspection or any of your acts or omissions (including your failure to maintain the painted surface in a reasonable condition or excessive wear and tear).

**9.3** The warranty in clause 9.1 does not cover, and we will in no way be liable for any claim arising out of or in connection with:

- substrates with existing corrosion or moisture ingress;

- surfaces affected by building movement or structural issues;
- settling, movement, cracking, lifting, peeling, flaking, deterioration or other failure of the substrate or a previous surface coating;
- concrete surfaces affected by concrete cancer or with a carbon contaminated concrete substrate;
- ferric metals with existing rust conditions or non ferric metals with existing oxidizing issues;
- any galvanised metals whatsoever;
- any floor coating or natural timber coating performed in the course of the Works; and
- any part of the Works where we have notified you that a surface is unsuitable for a particular coating and you direct us to apply that coating.

**9.4** In addition to the limited warranty under clause 9.1, you will also be entitled to any warranty provided by the manufacturer of paint products used in the performance of the Works.

## 10. Liability and indemnity

**10.1** This clause shall prevail over any inconsistency with any other provision of these terms and conditions.

**10.2** To the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on us are excluded. If the performance of the Works is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in these terms or conditions excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law. To the extent that the Australian Consumer Law permits us to limit our liability, or is not applicable, then our liability in respect of any claim arising out of or in connection with the agreement between us and you relating to the Works or our performance or non-performance of the Works (whether arising under any contract, indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity) is limited (in each case, at our option) as follows:

- in the case of defective services, supplying those services again or payment of the cost of having those services supplied again, and does not extend to services the subject of the Works which are not defective; and
- in the case of defective goods, replacing those goods, supplying equivalent goods or having those goods repaired, or payment of the cost of replacing those goods, of acquiring equivalent goods or of having those goods repaired, and does not extend to goods the subject of the Works which are not defective; and
- we will not be liable to you for any claim in the nature of economic loss, loss of profits, revenue or anticipated savings, opportunity cost or any direct or indirect consequential loss whatsoever.

**10.3** You must act reasonably to mitigate any loss you claim to suffer arising out of or in connection with the agreement between us and you relating to the Works or our performance or non-performance of the Works (whether arising under any contract, indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity). Our liability may be reduced or extinguished to the extent your losses would have been reduced had you acted reasonably to the extent and in the manner required under the law to mitigate any such loss, including by notifying us immediately after becoming aware of any property damage that you allege we caused or contributed to in the course of performing the Works.

**10.3** You agree to indemnify, and keep indemnified, us, our officers, employees, subcontractors and agents against all damage, expense, loss or liability whatsoever suffered or incurred, or any third party claim, which arises out of or in connection with any breach of your obligations under these terms and conditions or any of your acts or omissions, except to the extent that such damage, expense, loss or liability or third party claim is caused by, or is contributed to by, our act or omission.

## 11. Variations

**11.1** Any variation or amendment to these terms and conditions or the information set out in the Quotation Form (such as scope of Works) is only valid if it is in writing and signed by you and one of our authorised officers before the variation or amendment takes effect. We cannot agree to variations or amendments to perform work outside the scope of our BSA licence

**11.2** We will generally only agree to variations which are within the general scope and nature of the Works and which are capable of being executed within these terms and conditions.

**11.3** As a condition to agreeing to any variation in the scope of the Works, we may require that the Price and payment terms be varied (whether by applying an hourly rate to be paid for such variations or an additional lump sum price for such variations).

**11.4** Unless specifically identified in the Quotation Form as forming part of the Works, the following will be deemed to be variations:

- additional coats of paint required as a result of a colour selection that does not provide adequate coverage over the existing surface;
- you change the paint colour, brand or finish after the Works have commenced or paint has been ordered by us;
- where performance of the Works requires access to property which adjoins the Site and you have been unable to secure access rights or access rights are reduced or withdrawn resulting in additional scaffolding or alternative access expenses;
- where any colour scheme exceeds a maximum of three colours;
- where the access methods on which the quote was based (such as scaffolding or EWPs (cherry pickers, booms, scissor lifts etc) are restricted due to engineering issues or Site conditions (such as utility poles or wires or minimum clearances); and
- any information relevant to Site access, scope of Works or estimated time to complete the Works which you knew (or after reasonable consideration and making reasonable enquiries prior to engaging us should have known) may affect the performance of the Works in any way but did not make available to us prior to accepting our quote.

## 12. Dispute Resolution

**12.1** If a dispute arises between us and you in relation to these terms and conditions or the performance of the Works, neither party can commence court proceedings (except if seeking urgent injunctive or interlocutory relief) unless it has first complied with this clause 12.

**12.2** The party claiming that a dispute has arisen must notify the other party to the dispute in writing giving reasonable details and particulars of the dispute.

**12.3** If the parties are unable to resolve the dispute within 5 business days of receipt of the dispute notice (or such longer time as is reasonable for the parties to meet to discuss the dispute), the dispute must be referred to mediation.

**12.4** If mediator to conduct the mediation cannot be agreed, the President of the Institute of Arbitrators and Mediators Australia (or the President's nominee) will appoint a mediator. The mediation is to be conducted in accordance with the rules set by the mediator, will be held in Brisbane within 30 days of notification of the dispute and will be focussed towards working together to resolve the dispute, such that the parties agree to use reasonable endeavours in an effort to resolve the dispute.

**12.5** The cost of mediation is to be borne equally between us and you.

## 13. Termination

We may terminate the agreement between us and you for the performance of the Works at our convenience by giving 5 days written notice. We will be entitled to invoice you, and be paid, for that part of the Works completed up to the date of termination. Clauses 4, 6, 9, 10, 12 and 14 survive any termination of these terms and conditions.

## 14. Miscellaneous

**14.1** We may assign, novate or otherwise transfer any of our rights or obligations under these terms and conditions or the Quotation Form without your consent. We may subcontract all or any part of the Works without your consent.

**14.2** The laws of Queensland govern the agreement between us and you for the performance of the Works and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

**14.3** Any notice required to be given in writing shall be deemed to be given if delivered by hand or sent by post to the person to whom it is necessary or required to give notice to and shall in the case of posting be deemed to be received after the expiry of two full business days from the date of posting.

**14.4** If any provision of these terms and conditions is illegal or unenforceable, that provision is severed and the remainder of the terms and conditions and provisions of the Quotation Form shall continue in force.

**14.5** Nothing in these terms and conditions gives rise to a relationship of partnership, servant, agent or employer and employee between us and you.

**14.6** These terms and conditions constitute the entire agreement between us and you as to the subject matter of this document and supersede any prior agreement, understanding or representation between us and you and any terms provided by you that purport to govern our performance of the Works.