

# ARM CONTRACTOR COMPLIANCE SUPPLY TERMS AND CONDITIONS

Current as of 1 June 2020

## 1. Definitions and Interpretation

1.1. In these terms and conditions:

- 1.1.1. “**ARM**” and “**ARM-CC**” means the ARM Contractor Compliance subscription service provided by the Solutions Group.
- 1.1.2. “**Contractor**” means an entity, company or person who is subject to an entry in the ARM-CC database and who has had their compliance status determined.
- 1.1.3. “**Client**” means the person, company or entity receiving ARM-CC services.
- 1.1.4. “**Compliance Status**” means a determination that the contractor has any required trade qualification, trade certification, statutory licence, trade association membership, statutory registration and other like compliance requirement and that the contractor is insured.
- 1.1.5. “**Commencement Date**” means the date agreed between the Client and the Solutions Group when the ARM-CC agreement is to commence.
- 1.1.6. “**Receiving Services**” means the process of subscribing to ARM-CC, engaging the Solutions Group to provide ARM-CC services, receiving ARM-CC services from the Solutions Group, or relying upon ARM-CC services provided by the Solutions Group, however the circumstances of engagement, receipt or reliance may arise. The phrase “**Receives Services**” has a corresponding meaning.
- 1.1.7. “**Services**” means any ARM-CC subscription, compliance check, database search, information, product, good, service or the like.
- 1.1.8. “**Solutions Group**” refers to Solutions IE Pty Ltd (ABN: 77 079 173194), Solutions in Fire Pty Ltd (ABN: 50 102 735 508), the Trustee for the Building Report Services Trust (ABN: 26 308 831 509) jointly and severally each of 9 Gardner Close, Milton, QLD 4064.
- 1.1.9. “**Terms**” means these Terms and Conditions upon which the Services are provided by the Solutions Group to the Client.

## 2. Scope of Services

2.1. The Client agrees to engage the Solutions Group to provide:

- 2.1.1. Access to the ARM-CC online portal. The client can upload details of contractors and ARM-CC will determine their compliance status. The client will be able to view a list of contractors and their compliance status.

- 2.1.2. ARM-CC will perform a compliance check for contractor details provided to the Solutions Group. ARM-CC may make additional notes about a contractor.
- 2.1.3. The ARM-CC database stores the expiration dates for insurance and any licences. ARM-CC can notify the client or the contractor prior to expiration.
- 2.2. The Solutions Group in no way guarantees, promotes or endorses the licence, insurance, certification or qualifications of any contractor for whom Compliance Status is determined or any other information which is provided or supplied.
- 2.3. In particular, ARM-CC makes no assurance, recommendation or endorsement that any insured amount for a contractor is appropriate or suitable for the work the contractor is to perform.
- 2.4. ARM-CC is not responsible for allocating work to a particular contractor nor determining whether the contractor is appropriate to perform particular work.
- 2.5. Contractor compliance is current at the time of assessment by ARM. ARM in no way guarantees that the contractor's circumstances of insurance, registration, licensing or qualifications cannot, will not or have not changed since the date of assessment.

### **3. Binding Terms and Conditions**

- 2.1. These Terms are binding upon the Client.
- 2.2. The only warranties, guarantees, conditions and/or obligations which are binding upon ARM-CC or The Solutions Group are:
  - 2.2.1. those set out in these Terms;
  - 2.2.2. those otherwise agreed to in writing by The Solutions Group; and
  - 2.2.3. those, if any, which are implied at law and which cannot be excluded.

### **4. General and Applicable Law**

- 4.1. The Terms shall be governed and interpreted according to the laws of Queensland, Australia.
  - 4.1.1. The Solutions Group and each Client consents to submit to the jurisdiction of the Courts of Queensland and the Commonwealth.
- 4.2. No provision in the Terms will exclude, restrict or modify any condition, warranty or liability implied by applicable law, where such an exclusion, restriction or modification would render that provision void. In the event that a provision of the Terms proves to be illegal or unenforceable pursuant to any statute or rule of law, or for any other reason, such provision is deemed severed without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

### **5. Entire Agreement and Understanding**

- 5.1. These Term set out the whole of the agreement and understanding between The Solutions Group and the Client.

- 5.2. Any and all earlier understandings between the Client and the Solutions Group, whether written or oral, are superseded by this agreement any agreed, written and signed order form between the client and the Solutions Group.
- 5.3. Subject to clause 5, these Terms can only be mended or modified by the mutual agreement of The Solutions Group and the Client. No supplementation, amendment or modification of these Terms shall be binding unless it is in writing and signed for or by both The Solutions Group and the Client.
- 5.4. By Receiving Services, the Client accepts these Terms without reservation.

## **6. Modification of Terms**

- 6.1. The Solutions Group reserves the right to change these Terms from time to time.
- 6.2. The Solutions Group will take reasonable steps to inform the Client of changes to the Terms.

## **7. Status of Services**

- 7.1. The Solutions Group without any obligation to notify the Client
  - 7.1.1. withdraw the Services, completely or partially;
  - 7.1.2. restrict access to the Services, completely or partially; or
  - 7.1.3. modify the Services to any extent or degree at its absolute discretion,
- 7.2. This agreement will continue until either party provides written notice of termination with at least 30 days' notice.

## **8. Payment**

- 8.1. ARM-CC will charge the client a fee (including G.S.T) as stated in the order form.
- 8.2. The client will pay the fee monthly, with the first invoice being issued on the commencement date.
- 8.3. The order form will outline a number of ad-hoc compliance checks. If the number of ad-hoc checks exceeds the number in the order form, an additional fee may be charged.
- 8.4. Each year after the commencement date, the fee charged to the client will increase by 4%.
- 8.5. If payment is not received by the due date on the invoice, then access to the ARM-CC database will be restricted until payment is received.

## **9. Cancellation Policy**

- 9.1. If the client terminates between 2 to 4 weeks prior to the commencement date, the client will be liable to pay 25% of the total subscription fee set out in the order form.
- 9.2. If the client terminates less than 2 weeks prior to the commencement date, the client will be liable to pay 50% of the total subscription fee.

- 9.3. If the client terminates after the commencement date, the client will be liable to pay 100% of the total subscription fee.

## **10. Force Majeure**

- 10.1. If any party is prevented or delayed in complying with an obligation by an event beyond its reasonable control, performance by it of that obligation is suspended during that time, but only to the extent that compliance is prevented or delayed.

## **11. Waiver**

- 11.1. A party's failure to exercise or delay in exercising a power or right shall not operate as a waiver of that power or right.
- 11.2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 11.3. A waiver is not effective unless in writing.
- 11.4. Waiver of a power or right is effective only in respect of the specific instance to which that waiver relates and for the specific purpose for which that waiver is given.

## **12. Acceptance**

- 12.1. If the Client receives ARM-CC services, the Client is deemed to have accepted these Terms.

## **13. Release and Indemnity**

- 13.1. The Customer indemnifies and holds indemnified The Solutions Group against:
- 13.1.1. any loss, damage or injury which may arise, directly or indirectly, by or against the Customer or by or against third parties, from The Solutions Group providing Services or from the Customer Receiving Services (including but not limited to any loss, damage or injury caused by the negligence, wilful act or default of The Solutions Group, its servants, agents and subcontractors or others whether or not such loss, damage or injury was foreseeable or contemplated by The Solutions Group);
- 13.1.2. Without limiting the generality of the above, the Customer indemnifies and holds indemnified The Solutions Group against any personal injury or other claim which may arise from The Solutions Group providing Services or from the Customer Receiving Services.
- 13.2. For the purposes of these Terms, the Customer acknowledges that The Solutions Group is contracting for and on behalf of the servants, agents and subcontractors of The Solutions Group. The servants, agents and subcontractors of The Solutions Group shall not be liable in respect of any loss, damage or injury suffered by the Customer as a result of the Services provided by The Solutions Group, nor for any consequential loss, damage or injury suffered by any third party.
- 13.3. The Customer agrees that the maximum liability of The Solutions Group to the Customer, in relation to any loss, damage or injury of any nature arising, directly or indirectly, from receiving and/or relying upon Services, equals the amount actually paid by the Customer to The Solutions Group in relation to the Services.

13.4. If the Customer suffers any such loss, damage or injury and The Solutions Group is legally unable to obtain a release from liability as contemplated above for any reason, then The Solutions Group's liability for such loss or claim will be limited, at The Solutions Group's option, to one or more of the following:

13.4.1. in relation to services:

13.4.1.1. the supply of the Services again;

13.4.1.2. the payment of the cost of having the Services supplied again.

13.4.2. in relation to goods:

13.4.2.1. the replacement of the goods or the supply of equivalent goods;

13.4.2.2. the repair of such goods;

13.4.2.3. the payment of the cost of replacing the goods or acquiring equivalent goods; or

13.4.2.4. payment of the cost of having the goods repaired.

## **14. Restrictions on accessing and using the Services**

14.1. The Customer agrees that all Services are provided only for the purpose of assisting bona fide paying customers of The Solutions Group, and agrees:

14.1.1. Only to use the Services for the Customer's own bona fide purposes in their capacity as a customer of The Solutions Group;

14.1.2. Not to use the Services in any way for the purpose of gaining a competitive advantage over The Solutions Group;

14.1.3. Not to communicate, broadcast, reproduce, disseminate, disclose, supply or otherwise provide all or any part of the Services to any third party without the prior written consent of The Solutions Group;

14.1.4. When using the Services in any way, to only do so by way of so using the whole of the information or report so that the contextual integrity of the information or report is preserved;

14.1.5. Only to apply, use or rely upon the Services for the purpose and within the scope and limitations provided for in these Terms and in any report and/or subject matter comprising the Services;

14.1.6. That it may not rely upon the Services for any purpose unless and until it has received an invoice from The Solutions Group in respect of the Services and has paid that invoice in full;

14.1.7. That the Customer does not hold copyright or any other intellectual property rights in the Services, other than the minimum rights necessary to use the Services for the purposes for which they are provided.

14.1.8. Not to do any act which constitutes an infringement of copyright or any other intellectual property right without the express permission in writing of The Solutions Group.

14.2. No rights in relation to the Services, including but not limited to the rights to use or rely upon the Services pass to the Customer until the money owing for those Services has been paid in full.

- 14.3. Rights in any goods associated with the Services does not pass to the Customer until the money owing for the Services has been paid in full. The Customer in the meantime takes custody of any such goods and retains them as the fiduciary agent and bailee of The Solutions Group.

## **15. Customer's Information and Privacy**

- 15.1. The Customer and or the Contractor authorises The Solutions Group to retain, organise and commercially exploit information about the Customer or Contractor provided to The Solutions Group in the context of the Services, for any purpose connected with The Solutions Group's business and to provide that information to any third party for any purpose associated with the Services.

- 15.2. The Solutions Group will make relevant information in its records about the Customer and or Contractor available to the Customer and or Contractor upon request, to the full extent required by applicable privacy legislation. Please refer to The ARM Contractor Compliance Privacy Policy for further details.

### **15.3. Collection of information**

- 15.3.1. ARM collects and stores information regarding contractors and their current compliance with the requirements of practice in their trade or profession.

- 15.3.2. ARM will provide relevant information to its customers which assists them to make a decision when considering employing a contractor.

- 15.3.3. ARM will only provide information to the client which is available publicly or has been approved by agreement of the relevant contractor for use as part of the provision of ARMs service.

- 15.3.4. Personal information may be accessed at any time by the person about whom it is held.

- 15.3.5. Sensitive information includes information about a contractor or clients racial or ethnic origin; political opinions; membership of political associations; religious beliefs, affiliations or practices; membership of professional or trade associations or unions; sexual preferences or practices; criminal records; or health.

- 15.3.5.1. ARM limits the collection, use and disclosure of sensitive information to those purposes which advance the service, and which are permitted by law, upon the consent of the affected party.

- 15.4. The Privacy Policy for ARM-CC may change from time to time.