1. : GENERAL TERMS AND CONDITIONS
2. INTRODUCTION
	* 1. These terms and conditions (**Terms**) apply:
			1. when you use Rockpool's websites located at <https://www.rockpoolrealestate.com.au/> and <https://rockpoolportal.com/> (**Websites**), as set out in **part 2**;
			2. when you purchase any of Rockpool’s packages or services (**Services**), either by using the Websites or otherwise, as set out in **part 3**; and/or
			3. when you appoint Rockpool as your agent for the purposes of selling your property (the **Property**) via a [Form 6](https://publications.qld.gov.au/dataset/d0989f98-f0eb-48ad-9d4a-3eba971f7fb2/resource/06a46202-16c8-4b72-8cc4-3eff95e33403/download/0475ftpof6v1securityenabled.pdf) and/or under the *Property Occupations Act 2014* (QLD) or under a similar legislation, as set out in **part 3**.
		2. You agree to be bound by these Terms which form a binding contractual agreement between you and us, ROCKPOOL REAL ESTATE ABN 63 453 754 370 (**Rockpool, our, we or us**).
3. GENERAL
	* 1. (**limitation of liability and warranties**) Our liability and any warranties in relation to these Terms are limited by clauses 14 and 15 of Part 3.
		2. (**Governing law**) This agreement is governed by the law applying in Queensland, Australia.
		3. (**Jurisdiction**) Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
		4. (**Amendments**) These Terms may only be amended by Rockpool in accordance with the Terms.
		5. (**Waiver**) No party to these Terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
		6. (**Further acts**) Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to these Terms.
		7. (**Assignment**) A party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
		8. (**Entire Agreement**) These Terms embody the entire agreement between the parties and supersede any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of the Terms.
		9. (**Interpretation**) In these Terms, the following rules of interpretation apply:
			1. (**singular and plural**) words in the singular includes the plural (and vice versa);
			2. (**gender**) words indicating a gender includes the corresponding words of any other gender;
			3. (**defined terms**) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
			4. (**person**) a reference to "**person**" or "**you**" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
			5. (**party**) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
			6. (**these Terms**) a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these Terms, and a reference to these Terms includes all schedules, exhibits, attachments and annexures to it;
			7. (**document**) a reference to a document (including these Terms) is to that document as varied, novated, ratified or replaced from time to time;
			8. (**headings and parts**) headings and parts, and words in bold type, are for convenience only and do not affect interpretation;
			9. (**includes**) the word "**includes**" and similar words in any form is not a word of limitation; and
			10. (**adverse interpretation**) no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.
4. : WEBSITE TERMS AND CONDITIONS
5. ACCESS AND USE OF THE WEBSITE

You must only use the Websites in accordance with these Terms and any applicable laws, and must ensure that your employees, and any other agents who use or access the Websites comply with these Terms and any applicable laws.

1. ACCOUNT REGISTRATION

To be able to purchase our Services and access the Vendor Portal, you will be required to sign up for an account (**Rockpool Account**).

When you register for a Rockpool Account, you must provide true, accurate and complete information as requested and keep this information up to date after registration.

You agree that you're solely responsible for:

* + 1. maintaining the confidentiality and security of your Rockpool Account information and your password; and
		2. any activities and those of any third party that occur through your Rockpool Account, whether those activities have been authorised by you or not.

You also agree to let us know if you detect any unusual activity on your account as soon as you become aware of it.

We won't be responsible to you for, and expressly disclaim any liability for, any cost, loss, damages or expenses arising out of a failure by you to maintain the security of your Rockpool Account information or your password.

1. YOUR OBLIGATIONS

You must not:

* + 1. copy, mirror, reproduce, translate, adapt, vary, modify, sell, decipher or decompile any part or aspect of the Websites without the express consent of Rockpool;
		2. use the Websites for any purpose other than the purposes of browsing, selecting or purchasing Services;
		3. use, or attempt to use, the Websites in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity;
		4. use, or attempt to use, the Websites in a manner that may interfere with, disrupt or create undue burden on the Websites or the servers or networks that host the Websites;
		5. use the Websites with the assistance of any automated scripting tool or software;
		6. act in a way that may diminish or adversely impact the reputation of Rockpool, including by linking to the Websites on any other website; and
		7. attempt to breach the security of the Websites, or otherwise interfere with the normal functions of the Websites, including by:
			1. gaining unauthorised access to Websites accounts or data;
			2. scanning, probing or testing the Websites for security vulnerabilities;
			3. overloading, flooding, mailbombing, crashing or submitting a virus to the Websites; or
			4. instigate or participate in a denial-of-service attack against the Websites.
1. INFORMATION ON THE WEBSITE
	* 1. While we make every effort to ensure that the information on the Websites is as up-to-date and accurate as possible, you acknowledge and agree that we do not (to the maximum extent permitted by law) guarantee that:
			1. the Websites will be free from errors or defects (or both, as the case may be);
			2. the Websites will be accessible at all times;
			3. messages sent through the Websites will be delivered promptly, or delivered at all;
			4. information you receive or supply through the Websites will be secure or confidential; and
			5. any information provided through the Websites is accurate or true.
		2. We reserve the right to change any information or functionality on the Websites by updating the Websites at any time without notice, including product descriptions, prices and other Websites Content.
2. INTELLECTUAL PROPERTY
	* 1. The Company retains ownership of the Websites and all materials on the Websites (including text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software) (**Websites** **Content**) and reserves all rights in any intellectual property rights owned or licensed by it not expressly granted to you.
		2. You may make a temporary electronic copy of all or part of the Websites for the sole purpose of viewing it. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish the Websites or any Websites Content without prior written consent from Rockpool or as permitted by law.
		3. In this clause 5, "**intellectual property rights**" means all copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.
3. THIRD PARTY TERMS AND CONDITIONS
	* 1. The Customer acknowledges and agrees that third party terms & conditions (**Third Party Terms**) may apply.
		2. The Customer agrees to any Third Party Terms applicable to any third party goods and services, and Rockpool will not be liable for any loss or damage suffered by the Customer in connection with such Third Party Terms.
4. LINKS TO OTHER WEBSITES
	* 1. The Websites may contain links to other websites that are not our responsibility. We have no control over the content of the linked websites and we are not responsible for that content.
		2. Inclusion of any linked website on the Websites does not imply our approval or endorsement of the linked website.
5. SECURITY

The Company does not accept responsibility for loss or damage to computer systems, mobile phones or other electronic devices arising in connection with use of the Websites. You should take your own precautions to ensure that the process that you employ for accessing the Websites does not expose you to risk of viruses, malicious computer code or other forms of interference.

1. REPORTING MISUSE

If you become aware of misuse of the Websites by any person, any errors in the material on the Websites or any difficulty in accessing or using the Websites, please contact us immediately using the contact details or form provided on our Websites.

1. : CLIENT TERMS
2. CLIENT FORM, THIS AGREEMENT
	* 1. These Client Terms (Part 3 of the Terms) will apply to all your dealings us, including being incorporated in all agreements, quotations or orders under which we are to provide services to you, including but not limited to a Form 6, or the purchase of a service using the Websites’ functionality, (each a **Client Form**) together with any additional terms included in such a Client Form in writing.
		2. You will be taken to have accepted these Client Terms if you accept a Client Form, or if you order, accept or pay for any services provided by us, either via the Websites or otherwise, after receiving or becoming aware of the Terms or these Client Terms.
		3. In the event of any inconsistency between these Client Terms and any Client Form, the clauses of these Client Terms will prevail to the extent of such inconsistency.
3. APPOINTMENT AS AGENT
	* 1. Unless specifically agreed otherwise, we retain the right not provide you with any Services unless you formally appoint us as an exclusive agent for the purposes of selling your Property, under the *Property Occupations Act 2014* (QLD), or under a similar legislation.
		2. You must appoint us as an agent on an exclusive agency basis either by entering into a Form 6 (which may be downloaded [here](https://publications.qld.gov.au/dataset/d0989f98-f0eb-48ad-9d4a-3eba971f7fb2/resource/06a46202-16c8-4b72-8cc4-3eff95e33403/download/0475ftpof6v1securityenabled.pdf)) with us, or by another instrument, if otherwise prescribed by the relevant legislation (each an **Appointment Form**) for the maximum term prescribed by such an Appointment Form and/or the relevant legislation.
4. SERVICES
	* 1. In consideration for your payment of the fees set out in a Client Form (**Fees**) and/or the commission set out in an Appointment Form, we will provide you with services set out in a Client Form (**Services**).
		2. Unless otherwise agreed, we may, in our discretion:
			1. not commence work on any Services until you have paid any Fees or deposit payable in respect of such Services; and
			2. withhold delivery of Services until you have paid an invoice in respect of such Services.
5. YOU OBLIGATIONS
	1. PROVIDE INFORMATION AND LIAISON
		1. You must provide us with all documentation, information and assistance reasonably required for us to perform the Services. Such information includes but is not limited to your full name, address, contact number and email address.
		2. You agree and warrant that all information you provide to us will be accurate, current and complete and to immediately update such information to keep it accurate, current and complete. We reserve the right to suspend your access to our Websites and/or Services if any information provided proves to be inaccurate, not current or incomplete.
		3. You agree to liaise with us as we reasonably request for the purpose of enabling us to provide the Services.
	2. WARRANTIES

You warrant that:

* + 1. you have the authority to sell the Property;
		2. there are no legal restrictions preventing you from agreeing to these Terms;
		3. you will grant us access to the Property at mutually agreed times for the purposes of inspections, videography or photography sessions and otherwise to allow us to perform the Services; and
		4. you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions.
1. PAYMENT
	1. FEES

You must pay us fees in the amounts and at the times set out in the Client Form or as otherwise agreed in writing.

* 1. COMMISSION

Where you have appointed us as your agent for the purposes of selling your Property:

* + 1. you must pay us the commission in the amount, at the time and by the method set out in the relevant Appointment Form and/or the relevant contract of sale; and
		2. in all other circumstances, we may charge a commission of 2% of the value of your Property from the deposit a buyer places on your Property into our trust account or as otherwise agreed.
	1. INVOICES

Unless otherwise agreed in the Client Form:

* + 1. if we issue an invoice to you, payment must be made by the time(s) specified in such invoice; and
		2. in all other circumstances, you must pay for all goods and services within 2 weeks of receiving an invoice for amounts payable.
	1. PAYMENT METHOD

You must pay Fees using the fee payment method specified in the Client Form.

* 1. EXPENSES

Unless otherwise agreed in writing:

* + 1. You will bear all travel, accommodation, office stationery, computer storage, media and related expenses reasonably incurred by us in connection with a Client Form; and
		2. any third party costs incurred by us in the course of performing the Services may be billed to you, unless specifically otherwise provided for in the Client Form.
	1. GST

Unless otherwise indicated, amounts stated in a Client Form do not include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.

* 1. CARD SURCHARGES

We reserve the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).

1. CHANGES
	* 1. You must pay additional service fees for changes to Services requested by you which are outside the scope set out in the relevant Client Form (**Changes**).
		2. Unless otherwise agreed in writing, we may at our discretion extend or modify any delivery schedule or deadlines for the Services as may be reasonably required by such Changes.
2. ACCREDITATIONS

Unless otherwise agreed in writing:

* + 1. all displays or publications of any deliverables provided to you as part of the Services (**Deliverables**) must, if requested by us, bear an accreditation and/or a copyright notice including our name, or logo, in the form, size and location as directed by us; and
		2. we retain the right to describe the Services and reproduce, publish and display the Deliverables in our portfolios and websites for the purposes of recognition or professional advancement, and to be credited with authorship of the Services and Deliverables in connection with such uses.
1. THIRD PARTY GOODS AND SERVICES
	* 1. Any Service that require us to acquire goods and services supplied by a third party on your behalf may be subject to the terms & conditions of that third party (**Third Party Terms**), including 'no refund' policies.
		2. You agree to any Third Party Terms applicable to any goods and services supplied by a third party that we or you acquire as part of the Services and we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms.
2. SUBCONTRACTING

We may subcontract any aspect of providing the Services and you hereby consent to such subcontracting.

1. COMMISSIONs from other agents
	* 1. We may retain commissions and/or referral fees that we may receive from third parties in connection to performing its Services under this agreement, provided that we comply with all applicable laws.
		2. Where we refer your Property to another agent for sale, we will first seek your approval and disclose to you the commission we would receive, in connection with such referral if the property is sold by such other agent, at the time of seeking your approval.
2. CONFIDENTIALITY
	* 1. Except as contemplated by these Terms, each party (you or we) must not, and must not permit any of its officers, employees, agents, contractors or related companies to, use or disclose to any person any confidential information disclosed to it by the other party without its prior written consent.
		2. This clause 11 does not apply to:
			1. information which is generally available to the public (other than as a result of a breach of these Terms or another obligation of confidence);
			2. information required to be disclosed by any law; or
			3. information disclosed by us to its subcontractors, employees or agents for the purposes of performing the Services or its obligations under these Terms.
3. INTELLECTUAL PROPERTY
	1. YOUR CONTENT
		1. You grant us (and our subcontractors, employees and agents) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use Your Content to the extent reasonably required to perform any part of the Services.
		2. You
			1. warrant that our use of Your Content as contemplated by these Terms will not infringe any third-party Intellectual Property Rights; and
			2. will indemnify us from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement or a claim of such an infringement.
	2. DEVELOPED IP

All Developed IP will be solely and exclusively owned by us.

* 1. OUR IP
		1. We grant to you a non-exclusive, royalty free, non-transferable and revocable licence to use Our Content and any Developed IP to the extent required for you to use, enjoy the benefit of or exploit the Services and/or the Deliverables.
		2. Unless we otherwise agree in writing, you will not acquire Intellectual Property Rights in any of Our Content under these Terms or as part of receiving the Services.
	2. DEFINITIONS

For the purposes of this clause 12:

* + 1. "**Your Content**" means any Material supplied by you to us under or in connection with these Terms, including any Intellectual Property Rights attaching to that Material.
		2. "**Developed IP**" means the Deliverables and any other Material produced by us in the course of providing the Services, either alone or in conjunction with you or others, and any Intellectual Property Rights attaching to that Material or the Deliverables.
		3. "**Intellectual Property Rights**" means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, confidential information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the start date set out in a Client Form, whether registered or unregistered.
		4. "**Our Content**" means all Material owned or licensed by us that is not Developed IP and any Intellectual Property Rights attaching to that Material.
		5. "**Material**" means tangible and intangible information, documents, reports, drawings, designs, software (including source and object code), inventions, concepts, data and other materials in any media whatsoever.
1. PRIVACY

You agree to be bound by Rockpool's Privacy Policy, which can be found [**here**].

1. WARRANTIES
	* 1. To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in these Terms or a Client Form are excluded.
		2. Where any law (including the *Competition and Consumer Act 2010* (Cth)) implies a condition, warranty or guarantee which may not lawfully be excluded, then, to the maximum extent permitted by applicable law, our liability for breach of that non-excludable condition, warranty or guarantee will, at our option, be limited to:
			1. in the case of goods, their replacement or the supply of equivalent goods or their repair; and
			2. in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.
2. LIMITATION OF LIABILITY

To the maximum extent permitted by law, our liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with these Terms:

* + 1. is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)); and
		2. is limited, insofar as concerns other liability, to the total money paid to us under these Terms as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

Nothing in this agreement is intended to limit the operation of the *Competition and Consumer Act 2010* (Cth).

1. INDEMNITY

You indemnify us from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

* + 1. any breach of these Terms by us; or
		2. any negligent, fraudulent or criminal act or omission committed by you or your personnel.
1. TERMINATION
	1. TERMINATION BY US

We may terminate these Terms in whole or in part immediately by written notice to you if:

* + 1. you are in breach of any term of the Terms; or
		2. you become subject to any form of insolvency or bankruptcy administration.
	1. TERMINATION BY YOU

You may terminate this Agreement in whole or in part by written notice to us if:

* + 1. we have committed a material breach of this Agreement and have failed to remedy the breach within 30 days after receiving written notice from you; or
		2. we consent to such termination, subject your fulfillment of any pre-conditions to such consent (for example, payment of a pro-rata portion of the agreed fees).
	1. EFFECT OF TERMINATION
		1. Upon termination of this Agreement, you must promptly pay (at our request):
			1. any payments required to be paid by us to third party suppliers or service providers to discontinue their work;
			2. our standard fees in relation to work already performed; and/or
			3. an equitable amount by way of profit margin on the preceding items.
		2. Notwithstanding clause 17.3(a), we will not charge you for any services and refund you any amounts we have charged you to date, if under the Client Form you engaged us to sell your Property and you terminated these Terms prior to appointing us as your exclusive agent under an Appointment Form.
	2. SURVIVAL

Any provision of these Terms which, by its nature, would reasonably be expected to be performed after the termination, shall survive and be enforceable after such termination, including without limitation clauses 4, 7, 8, 8, 12, 13, 15, 16 and 17.3 of Part 3 of the Terms and Part 1 and Part 2 of the Terms.

1. DISPUTE RESOLUTION
	* 1. The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement prior to commencing any proceedings.
		2. If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party or, if the party is an individual, that individual.
		3. The parties acknowledge that compliance with this clause 18 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
			1. in the case of applications for urgent interlocutory relief; or
			2. a breach by another party of this clause 18.
2. NOTICES
	1. FORM OF NOTICE

A notice or other communication to a party under this Agreement must be:

* + 1. in writing and in English; and
		2. addressed to that party to:
			1. the postal address of that party; or
			2. the email address of that party that has been regularly used by the parties to correspond during the term of this Agreement (unless such email address is known to be inactive by the party giving notice).
	1. HOW NOTICE MUST BE GIVEN

A notice must be given by one of the methods set out in the table below and is regarded as given and received at the time set out in the table below.

| **Method** | **When Notice is regarded as given and received** |
| --- | --- |
| By hand | On delivery |
| By pre paid post in the same country | On the third business day after the date of posting |
| By pre paid post in another country | On the fifth business day after the date of posting by airmail |
| By email to the nominated email address | Unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address, 24 hours after the email was sent. |