

Mr Roofer Waterproofing Chch Limited
Terms and Conditions of Trade – Good and Services

These terms and conditions of trade (**Terms**) apply whenever the Company supplies any products or Services to any person, unless expressly agreed otherwise in writing. By requesting the supply of Goods and Services from the Company, the Customer acknowledges and agrees to the Terms.

Definitions

In these Terms:

"**Account**" means the Customer's account with the Company.

"**Company**" means Mr Roofer Waterproofing Chch Limited.

"**Customer**" means the person or entity placing an order or making the application or any person acting with ostensible authority on behalf of the Customer.

"**Goods**" means Goods supplied by the Company to the Customer at any time.

"**Guarantor**" means, any party executing a Guarantee of the Customer's Account with the Company.

"**Order**" or "**Orders**" means the order or orders of the Customer to the Company to supply Goods and/or Services.

"**PPSA**" means the Personal Property Securities Act 1999.

"**Services**" means Services supplied by the Company to the Customer at any time.

1 General

- 1.1 All Goods and Services supplied by the Company to any person are supplied on the basis set out in these terms and conditions unless expressly agreed otherwise in writing. Where the Customer comprises two or more persons, Customer means those persons jointly and severally. By requesting the supply of Goods or Services from the Company, the Customer acknowledges and agrees to the Terms.
- 1.2 The Company may vary the Terms from time to time. Any such variation will be effective from the date specified by the Company in any written notice provided to the Customer or published on the Company's website. By requesting or continuing to request any Goods or Services after such effective date, the Customer accepts and agrees to be bound by such variation.

2 Orders and quotes

- 2.1 The Company agrees to sell and the Customer agrees to purchase the Goods and Services referred to on a purchase order, quotation, invoice or similar document issued by the Company (**Order Confirmation**).
- 2.2 The Order Confirmation may contain additional terms and conditions for the supply of the relevant Goods and Services (including price, quantity, type of Goods, method of payment, delivery basis and indicative delivery date). In the event of any inconsistency between these Terms and the Order Confirmation, the Order Confirmation shall prevail.
- 2.3 Each Order Confirmation shall constitute acceptance by the Customer of these Terms. A Customer cannot cancel any order for Goods or Services after the issue of an Order Confirmation and is bound to pay the price for those Goods and Services, unless the Company expressly agrees otherwise in writing.
- 2.4 The Company may withdraw any quotation before it is accepted by the Customer, and in any event, any quote will lapse without notice 10 working days after it is given.

3

- 3.1 The Customer must pay all amounts set out in each Company invoice in full, without any set-off or deduction, by the due date and in the manner specified on the invoice.
- 3.2 Unless otherwise specified, payment for all Goods and Services shall be made:
- (a) Within 10 working days of date of invoice;

- (b) Progress payments claimed under the Construction Contracts Act 2002 shall be made no later than 10 working days after a Payment Claim is served on the Customer.
- 3.3 If full payment for the Goods or Services is not made by the due date, then without prejudice to any other rights or remedies available to us:
- (a) we may cancel or suspend the delivery of further Goods or Services;
- (b) we may charge interest on overdue monies on a daily basis at 5% per annum above the current overdraft rate charged by our bankers at that time, and interest shall continue to accrue both before and after judgment;
- (c) you will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by us in recovering such monies;
- (d) we may supply information about the default for publication on any credit agency database; and
- (e) any discount offered to you will be deemed to be withdrawn, and you will be liable for the full invoice price.
- 3.4 We may accept and apply payments from you in respect of any indebtedness, and we will not be bound by any conditions or qualifications attaching to the payments.
- 3.5 Unless otherwise agreed, the quoted price of Goods and Services excludes applicable taxes (including any value added tax, Goods and Services tax or similar), duties, freight and insurance, each of which are payable by the Customer together with the price.
- 3.6 The Company may retain any documents of title to Goods until it receives satisfactory confirmation from its bank that it has received full payment of those Goods in cleared funds.

4

- 4.1 The Goods and Services will be supplied and delivered as specified on the relevant Order Confirmation (or as otherwise agreed in writing).
- 4.2 The Customer acknowledges and agrees the Company accepts no duty or responsibility for delivery but may elect to arrange delivery at its discretion without any liability and at the Customer's costs and responsibility in all things.
- 4.3 The Customer shall be deemed to have accepted delivery and liability for Goods immediately the Company notifies the Customer that any Goods are ready for collection or they are placed with a carrier or delivered to the Customer's business premises or site whether attended or not.
- 4.4 Any time stated for delivery is an estimate only. The Company is not liable for any delay in delivery (howsoever caused), nor for any failure to deliver caused by the Customer's failure to provide the Company with adequate delivery instructions or any other instructions relevant to the supply of the Goods and Services.
- 4.5 The Company shall not be liable for delay failure or inability to deliver any Goods or perform any Services.

5

- 5.1 Risk in the Goods passes to the Customer on delivery.
- 5.2 Ownership of and title to the Goods is retained by the Company and shall not pass to the Customer until the Company receives payment in full for the Goods.
- 5.3 Until title in the Goods passes to the Customer:
- (a) The Customer must: (i) hold the Goods as bailee of the Company; (ii) store the Goods in a manner which will protect them from damage or deterioration, separately from the Customer's or any other person's Goods or in a manner such that they are separately identifiable; and (iii)

**D
e
l
i
v
e
r
y**

**R
i
s
k
a
n
d
t
i
t
l
e**

insure the Goods against all risks for their full price from the date of delivery.

- (b) The Company authorises the Customer, in the ordinary course of the Customer's business, to use the Goods or sell them for full consideration, provided that the proceeds of such sale or use (in whatever form) shall be the property of the Company and the Customer must hold such proceeds on trust for the Company and deal with them as the Company directs. This authority to use and sell the Goods is revoked immediately if a Customer default occurs (as described below) or if the Company revokes that authority in writing.

5.4 The retention of title clause above creates a security interest in the Goods and their proceeds under the Personal Property Securities Act 1999 (NZ) (**PPSA**). The Customer agrees to sign such documents and do such other things as the Company may require in order to enable the Company to register and perfect that interest and obtain and maintain a first ranking priority position over the Goods and their proceeds. To the maximum extent permitted by applicable law, the parties agree that:

- (a) the Customer waives any right to receive a verification statement under the PPSA in respect of the security interest created by these Terms;
- (b) the Customer waives any rights and, with our agreement, contract out of the rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA 1999;
- (c) the Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA 1999 shall apply to these Terms and, with our agreement, contract out of such sections.

6

6.1 If:

- (a) the Customer breaches any provision of these Terms (or any other agreement with the Company);
- (b) the Customer suffers any bankruptcy or insolvency event (including the appointment of any liquidator, receiver, administrator or similar officer in respect of the Customer or any of its assets; any resolution is passed, proceedings filed or order made for the liquidation, receivership, administration, bankruptcy, winding-up or dissolution of the Customer; the Customer enters into any compromise or arrangement with its creditors; or any analogous event under the laws of any applicable jurisdiction); or
- (c) any event occurs or information becomes known to the Company which, in the Company's opinion, might materially affect the Customer's creditworthiness, the value of the Goods or the Customer's ability or willingness to comply with its obligations under these Terms (or any other agreement with the Company).

then without limiting any other right or remedy the Company may have, the Company may:

- (d) suspend or terminate any or all existing and future contracts with the Customer for the supply of Goods and claim damages from the Customer for all losses, including without limitation packaging, storage or demurrage costs, loss of profits and any reduction in value of the Goods;
- (e) divert the Goods (whether at sea or on shore);
- (f) enter on any premises where the Goods are located and take possession of and remove the Goods; and/or
- (g) re-sell or dispose of the Goods in any manner the Company sees fit.

6.2 The Customer irrevocably authorises the Company (together with its agents and contractors) to enter on to its premises without notice in order to exercise its rights under these Terms following a Customer default as described above. The Customer must procure all other consents and rights necessary to enable, and to indemnify the Company (and its agents and contractors) from and against any liability incurred in connection with the exercise by the Company of such rights.

6.3 The Customer will pay on demand all costs (including legal costs on a solicitor/client basis) incurred by the Company in connection with any default by the Customer or enforcement action taken by the Company under these Terms.

7

7.1 Except as set out in these Terms or otherwise expressly agreed in writing, all conditions, representations, warranties, terms and undertakings, whether express or implied, are excluded to the maximum extent permitted by law. Where Goods and/or Services are purchased for business purposes, the Customer acknowledges that the Consumer Guarantees Act 1993 does not apply.

7.2 If despite the exclusions above, the Company is held to be liable for any defect in the Goods and/or Services or their supply, the Company's obligations are limited, at the Company's option, to replacing the Goods and/or Services or refunding the price paid by the Customer for those Goods and/or Services.

7.3 Notwithstanding any other provision of these Terms, the Company's maximum aggregate liability arising out of or in connection with these Terms, whether in contract, tort (including negligence) or otherwise, will not exceed the price paid by the Customer for the Goods and/or Services the subject of the relevant claim. The Company will not in any circumstances be liable for any indirect or consequential loss, loss of profit, savings or goodwill or special or exemplary damages.

7.4 Any and all claims in respect of the Goods and/or Services or these Terms must be made by the Customer in writing to the Company within seven days of delivery. Any claims not made within this timeframe will be invalid and the Company will have no liability whatsoever in respect of such claims.

8

8.1 The Company may, in accordance with applicable law, collect and hold personal information about the Customer from any source the Company considers appropriate for the purposes of providing credit to the Customer, including the administration and management of the Customer's accounts with the Company; market research; marketing the Company's Goods and Services; and any other purpose relating to these Terms. The Customer authorises the company to: (a) disclose the Customer's personal information to any third party; and (b) transfer the Customer's personal information to any country, in connection with any of the purposes set out above.

8.2 The Customer has a right of access to, and may request correction of, personal information held by the Company about the Customer.

necessary to make it legal, valid and enforceable without altering its meaning or intent or, if that is not possible, that provision will sever from these Terms. In any event, the remaining provisions of these Terms will remain in full force and effect.

- 10.9 These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.

- 9.1 The Company shall be responsible for the actions of its employees in terms of the Health and Safety at Work Act 2015 (**HSWA**). The Customer shall be responsible for compliance with the HSWA in respect of the Customer's site and shall advise the Company prior to commencement of any work of any hazards on the Customer's site.

- 10.1 The Company will not be liable, and the Customer will not be entitled to cancel any order, for any delay or failure by the Company to perform its obligations under these Terms caused directly or indirectly by any event or circumstance beyond the Company's reasonable control (including fire, accident, earthquake, flood, drought, crime, war, blockade, civil commotion, epidemic, strike, lockout or labour dispute, shortage of fuel, power or rate material, inability to procure stock or transport, or acts or omissions by regulatory authorities).
- 10.2 Any dispute or difference arising out of or in connection with these Terms which cannot be resolved by negotiation may be referred by the Company to arbitration under the Arbitration Act 1996 (NZ) in Christchurch, New Zealand (unless the parties agree otherwise in writing) before an arbitrator agreed between the parties or, failing agreement, appointed by the President of the New Zealand Law Society. To avoid doubt, this clause shall not apply to any failure by the Customer to pay any undisputed amount for which the Company may issue proceedings in any court of competent jurisdiction.
- 10.3 These Terms, together with the relevant Company Order Confirmation and invoice, constitute the entire agreement between the parties for the supply of the Goods and/or Services and supersede and exclude any previous representation, agreement, arrangement or correspondence on the matter, any terms or documents submitted by the Customer and any terms implied by trade, custom, practice or course of dealing.
- 10.4 The Company may give notices or other communications under these Terms by hand, prepaid post, facsimile or email.
- 10.5 Any waiver or variation of these Terms will not be effective unless and to the extent expressly agreed in writing by the Company.
- 10.6 These Terms will not and are not intended to confer any benefit on or create any obligations enforceable by any person not a party to these Terms.
- 10.7 The Company may assign any of its rights and obligations to any person. The Customer may not assign any of its rights and obligations to any person without the prior written consent of the Company.
- 10.8 If any provision of these Terms is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, that provision will be amended to the extent