

**1. Definitions**

- 1.1 "Supplier" means Roofline Canterbury Limited, its successors and assigns or any person acting on behalf of and with the authority of Roofline Canterbury Limited.
- 1.2 "Customer" means the person/s buying the Services as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Services" means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Services as agreed between the Supplier and the Customer in accordance with clause 5 below.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts provision of, the Services.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.

**3. Authorised Representatives**

- 3.1 Unless otherwise limited as per clause 3.2, the Customer agrees that should the Customer introduce any third party to the Supplier as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Services, and/or to request any variation thereto, on the Customer's behalf, and such authority to continue until all orders have been completed or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer's duly authorised representative.
- 3.2 In the event that the Customer's duly authorised representative as per 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 Supplier 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 Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Services, or variation/s, requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

**4. Change in Control**

- 4.1 The Customer shall give the Supplier not less than fourteen (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, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

**5. Quotation**

- 5.1 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 5.2 In the event the Customer gives information relating to measurements and quantities of Goods required in completing the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.
- 5.3 Unless agreed in writing, the Customer at its own cost must provide the building consent, and scaffold to OSH requirements.
- 5.4 No allowance has been made to clear the site of any residual scrap. If the Supplier is required to remove the scrap, an extra charge will apply. Any useable materials, which are not reused in the course of the Supplier providing the Services and removed by the Supplier, will become the Supplier's property.

**6. Price and Payment**

- 6.1 At the Supplier's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Supplier to the Customer; or
  - (b) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Supplier reserves the right to change the Price:
  - (a) if a variation to the Services originally scheduled (including any Goods, applicable plans or specifications) is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, or prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
  - (c) in the event of increases to the Supplier in the cost of labour or Goods, which are beyond the Supplier's control.
- 6.3 At the Supplier's sole discretion, a non-refundable deposit may be required.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
  - (a) on completion of the Services; or
  - (b) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed;
  - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Customer and the Supplier.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any provision of Services by the Supplier under this or any other agreement. 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.

- 6.7 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Supplier's rights or ownership in relation to the Services, and this agreement, shall continue.

## **7. Provision of the Services**

- 7.1 Subject to clause 7.2, it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify the Supplier that the site is ready.
- 7.3 Provision of the Services to a third party nominated by the Customer is deemed to be provision to the Customer for the purposes of this agreement.
- 7.4 The Supplier may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by the Supplier for the provision of the Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of any delay. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Supplier is unable to provide the Services as agreed solely due to any action or inaction of the Customer then the Supplier shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

## **8. Risk**

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on delivery and the Customer must insure the Goods on or before delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 8.3 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 The Customer warrants that the structure of the premises in or upon which the Goods are to be installed or erected is sound and will sustain the installation and Services incidental thereto. If for any reason (including the discovery of asbestos, or dangerous access to roof) that the Supplier, its employees or contractors reasonably form the opinion that the Customer's premises is not safe for the Services to proceed then the Supplier shall be entitled to delay the Services (in accordance with the provisions of clause 7.2 above) until the Supplier is satisfied that it is safe for the installation to proceed. The Supplier may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Services undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price. The Supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises be unable to accommodate the installation (including but not limited to insufficient or defective foundations, walls or other structures not erected by the Supplier).

## **9. Customer Acknowledgments**

- 9.1 The Customer acknowledges and accepts that:
- (a) Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
  - (b) where the Supplier's quotation is for repairs to existing roofs, the quotation shall be based only on the replacement of damaged roofing and shall not include the replacement of roofing with slight imperfections, unless authorised by the Customer prior to the commencement of the Services. If the Customer requests the replacement of roofing that have slight imperfections but the Supplier does not deem to be defective, or affect the integrity of the roof, then this shall be a variation to the original quotation and clause 6.2 will apply; and
  - (c) the Supplier's express warranty is limited only to new or complete reroofs and shall be detailed accordingly in the Supplier's warranty documentation provided to the Customer at the completion of the Services, all other Services will be subject to clause 15 (Defects); and
  - (d) any advice or recommendations by the Supplier are provided on the basis of the Supplier's industry knowledge of New Zealand standards and experience only; and
  - (e) should the Supplier's recommendations in relation to the suitability of the Goods not be adhered to (including, but not limited to, pitch, depth, size, insulation requirements and environmental location), the Customer will bare all liability and responsibility for any problems that may arise. Furthermore, the Customer agrees to indemnify the Supplier against any loss or damage that the Supplier may incur through the Customer's failure to comply with this clause.

## **10. Access**

- 10.1 The Customer shall ensure that the Supplier has clear and free access to the site at all times to enable them to undertake the Services. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to walls, windows, painted surfaces, vehicles, plants, fences, pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of the Supplier.

## **11. Title**

- 11.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
  - (b) the Customer has met all of its other obligations to the Supplier.
- 11.2 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
- (d) the Customer should not convert or process the Goods 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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
- (e) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
- (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
- (h) the Supplier may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.

## **12. Personal Property Securities Act 1999 ("PPSA")**

- 12.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and/or collateral (account – being a monetary obligation of the Customer to the Supplier for Services – previously provided (if any) and that will be provided in the future by the Supplier to the Customer.
- 12.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and
  - (d) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 12.1 to 12.5.

## **13. Security and Charge**

- 13.1 In consideration of the Supplier agreeing to provide the Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Supplier's rights under this clause.
- 13.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

## **14. Customer's Disclaimer**

- 14.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.

## **15. Defects, Errors or Omissions**

- 15.1 The Customer shall inspect the Services on completion and shall within thirty (30) days of such time (being of the essence) notify the Supplier of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect/review the Services within a reasonable time following such notification if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) rectifying or re-providing the Services.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above.

## **16. Consumer Guarantees Act 1993**

- 16.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Services by the Supplier to the Customer.

## **17. Intellectual Property**

- 17.1 Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.
- 17.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

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- 17.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Customer.
- 17.4 Where the Supplier has designed, drawn, written plans or a schedule of Works, or created any Goods for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and Goods shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion.
- 17.5 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 17.6 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Goods which the Supplier has created, and/or any digital media of Services provided by the Supplier, to the Customer.

### 18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Supplier's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies the Supplier may have under this contract, if a Customer has made payment to the Supplier by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 18, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 18.4 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the provision of Services to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 18.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 19. Compliance with Laws

- 19.1 The Customer shall obtain (at the expense of the Customer) all licenses, approvals, applications and permits that may be required for the Services, and that are not included in the project documents provided by the Supplier.
- 19.2 Both the Customer and the Supplier agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.
- 19.3 It is the intention of the Supplier and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Services to be undertaken (where in the Supplier's opinion it is deemed necessary). It is also agreed that all scaffolding erected will meet specified safety standards and that any persons erecting the scaffolding are suitably instructed in its safe and proper erection and where necessary hold a current Certificate of Competency and/or are fully licensed.

### 20. Cancellation

- 20.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services have commenced by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Customer cancels provision of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 21. Privacy Act 1993

- 21.1 The Customer authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 21.2 Where the Customer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Customer shall have the right to request the Supplier for a copy of the information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Customer held by the Supplier.

### 22. Construction Contracts Act 2002

- 22.1 The Customer hereby expressly acknowledges that:

- (a) the Supplier has the right to suspend the Services within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
  - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
  - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Supplier by a particular date; and
  - (iv) the Supplier has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Supplier suspends the Services, it:
  - (i) is not in breach of contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
  - (iii) is entitled to an extension of time to complete the contract; and
  - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Supplier exercises the right to suspend the Services, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or
  - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Supplier suspending the Services under this provision.

**23. General**

- 23.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 23.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 23.4 The Customer shall 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.6 The Customer agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide Goods to the Customer.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.