

## Terms of trade

### 1. Definitions

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In these conditions unless the context otherwise requires:

- Company means Canterbury Roofing 2014
- Buyer means the person, or company buying the goods from the Company.
- Products and/or services mean the products and/or services being purchased by the Buyer from the Company.
- Contract means the contract between the Company and the Buyer for the purchase of the goods.
- Date of the contract means where the contract arises from a quotation given by the Company, i) the date of acceptance of the order by the Company; or ii) Where the contract arises from a quotation given by the Company, the date upon written notification of acceptance of the quotation is received by the Company.
- Contract price means the price of goods as agreed between the Buyer and the Company.
- Person includes a corporation, association, firm, company, partnership or individual. Quotation shall mean price on offer for a fixed term. Manager is the companies appointed decision maker.
- PPSA means the Personal Property Securities Act 1999.

### 2. Quotation

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The Buyer may request a Quotation from the Company setting out the price and quantity of the Goods to be supplied. If the Quotation is acceptable to the Buyer, the Buyer may place an order within an acceptable timeframe.

### 3. Acceptance

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If any instruction is received by the Company from the Buyer for the supply of products and/or services, it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer, the terms and conditions are definitive and binding.

### 4. Terms and Conditions

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These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and the services made by the Buyer after the date and time at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of, any employee, staff member or representative of the Buyer. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer, and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

### 5. Price

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- 5.1. The Price shall be as indicated on invoices provided by the Company to the Buyer in respect of products and/ or services supplied; or
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- 5.2. The Price shall be the Price of the Company's current Price at the date of delivery of any goods.
- 5.3. Time for payment for the products and/or services shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due on delivery of any goods.
- 5.4. The Company reserves the right to implement a surcharge for alterations to specifications of products after the order has been placed.

## **6. Payment, Late Payment, Default of Payment and Consequences of Default of Payment**

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- 6.1. The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Company.
- 6.2. Subject to any provision to the contrary in the Contract, payment (being cash unless otherwise arranged in advance and confirmed in writing by Canterbury Roofing 2014 shall be received on or before the seventh (7) working day following the date of the Company's invoice to the Buyer, which shall be issued promptly as outlined in the payment schedule.
- 6.3. Without prejudice to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Company will not be liable to the Buyer for any loss or damage the Buyer suffers because the Company exercised its rights under this clause.
- 6.4. In the event that:
- a. any money payable to the Company becomes overdue, or in the Company's opinion the Buyer will be unable to meet its payments as they fall due; or
  - b. the Buyer 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 Buyer or any asset of the Buyer; then without prejudice to the Company's other remedies at law
  - d. the Company shall be entitled to cancel all or any part of any order of the Buyer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

## **7. PPSA - Personal Property Securities Act 1999**

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- 7.1. The Contract constitutes a security interest in the goods supplied by the Company to the Buyer for the purposes of the PPSA as security for payment by the Buyer of all amounts due under the Contract, including any future amounts.
- 7.2. The Buyer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest over the Buyer, or obtain the priority

required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company.

7.3. To the extent that Part 9 of the PPSA applies, the Buyer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Buyer's benefit, or place any obligations on the Company in the Buyer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

7.4. To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Buyer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.

7.5. The Buyer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

## **8. Governing laws**

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These Terms of Trade will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the products and/or services or these Terms of Trade.

## **9. Dispute resolution**

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The Company will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

## **10. Reservation of title**

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**Ownership and title of the goods remains with The Company until the purchased price and all other monies owing by the Buyer, under the contract or any other contract to The Company, have been paid in full.**

## **11. Construction Contracts Act 2002**

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In the event that the Buyer is an owner occupier as defined by the Construction Contracts Act 2002 the Buyer hereby expressly acknowledges that

(a) The Seller has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Buyer, and:

(i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Buyer; or

(ii) a scheduled amount stated in a payment schedule issued by the Buyer in relation to the payment claim is not paid in full by the due date for its payment; or

(iii) the Buyer has not complied with an adjudicator's notice that the Buyer must pay an amount to the Seller by a particular date; and

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- (iv) the Seller has given written notice to the Buyer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) If the Seller suspends work, it:
  - (i) is not in breach of contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, alleged to be suffered, by the Buyer or by any person claiming through the Buyer; 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 Seller exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or
  - (ii) enable the Buyer to exercise any rights that may otherwise have been available to the Buyer under that Act as a direct consequence of the Seller suspending work under this provision.

## **12. Warranty**

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12.1 Subject to the conditions of warranty set out in clause 8.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within 5 (five) years of the date of completion of installation (time being of the essence) then the Seller will (at the Seller's sole discretion) repair the defect or remedy the workmanship.

12.2 The conditions applicable to the warranty given by clause 8.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
  - i) Failure on the part of the Buyer to properly maintain any Goods; or
  - ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
  - iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
  - iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - v) Fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyer's claim.

8.3 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

### **13. Liability**

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The Company shall not be liable for any loss of any kind whatsoever suffered by the Buyer as a result of any breach of any of the Company's obligations under the contract, including any cancellation of the contract or any negligence on the part of the Company, its servants, agents or contractors, nor shall the Company be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Buyer shall indemnify the Company against any claim by any such person.

### **14. Signatures and witnesses**

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I \_\_\_\_\_ of \_\_\_\_\_  
have read and accept the Terms of Trade as outlined in this document.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Your signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

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