

# Terms and Conditions of Trade

These terms and conditions of trade apply to all our Sale of Goods Contracts. Any order placed with Waterproofing Systems (NZ) Ltd ("Waterproofing Systems") constitutes your agreement to be bound by these terms. Any additional or different terms you stipulate or state in any communication with Waterproofing Systems (including an order) are hereby objected to and will not bind Waterproofing Systems unless Waterproofing Systems agree in writing. No sales person, representative or agent is authorised by Waterproofing Systems to give any guarantee, warranty or representation in addition to, or contrary to these terms. In any event, receipt of goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these terms.

## **1 PRICE AND PRICE VARIATION**

1.1 Prices quoted are excluding GST unless otherwise stated. Unless otherwise agreed in writing, the price of the goods will be the current price on the day of delivery of the goods. Prices do not include any delivery surcharges.

1.2 Waterproofing Systems shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to Waterproofing Systems of carrying out the whole or any part of the contract arising from any of the following:

- (a) Delays in delivery or installation of the goods or any of them as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfil the obligations under the contract or any action or inaction by the Customer or other circumstances beyond Waterproofing Systems' control;
- (b) Variation in the cost of Waterproofing Systems acquiring the goods directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications or any variation in currency exchange rates;
- (c) Variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or
- (d) Any correction of errors or omissions on the part of Waterproofing Systems or any of its representatives.

## **2 GST**

2.1 All goods and services sold are subject to Goods and Services Tax.

## **3 PAYMENT**

3.1 Unless otherwise agreed, the purchase price shall be paid to Waterproofing Systems at its address by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque, credit card or direct credit.

3.2 Credit card payments will incur a 3% fee, and this rate may change to align with bank merchant charges.

3.3 If the account is outstanding after 45days, the account will go on stop credit unless you currently have negotiated a payment arrangement with our accounts administrator.

3.4 If the account is outstanding after 60days, notice of intention to send to debt collection will apply. Any costs associated to debt collection will be invoiced to your account.

3.5 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 3.1. Payment of the disputed portion may be withheld provided the matter is brought to Waterproofing Systems' attention immediately it is discovered and a letter of explanation setting out the particulars of the dispute is sent to Waterproofing Systems within seven days of the dispute arising.

3.6 Waterproofing Systems reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered to by the Customer.

3.7 Late payment penalties will be charged on overdue accounts (past 30 day terms) at 2.5% per month as may be charged by Waterproofing Systems from time to time.

3.8 Any expenses, costs or disbursements incurred by Waterproofing Systems in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the Customer.

3.9 Retention of title does not pass on to the Customer until all moneys have been paid in full. Waterproofing Systems remains the owner of the goods even if passed on, sold or installed by the Customer.

## **4 NEW ACCOUNT**

4.1 Use of this account shall constitute acceptance of these terms and conditions.

4.2 The Customer shall not be liable for any indebtedness arising from the fraudulent use of the account provided that the Customer must on discovering the fraudulent use of the account immediately notify Waterproofing Systems of such fraudulent use. The burden of proving such use was fraudulent shall lie with the Customer.

4.3 The Customer shall return all goods acquired by fraudulent use.

## **5 DELIVERY**

5.1 Waterproofing Systems shall deliver the goods to the address stated on the order or as agreed by Waterproofing Systems in writing.

5.2 Waterproofing Systems shall deliver the goods by such carrier and such form of transport Waterproofing Systems consider to be appropriate.

5.3 Where you specify the carrier and the means of carriage, Waterproofing Systems shall deliver the goods in the way specified, the cost of such carriage being an additional charge to the invoiced price of the goods.

5.4 Waterproofing Systems will not be responsible for any part delivery or delay in delivery of the goods as a result of events occurring beyond Waterproofing Systems' control. Waterproofing Systems shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.

5.5 The Customer agrees to inform Waterproofing Systems within 30 days of the date of invoice if proof of delivery is required. After this period, no liability will lie with Waterproofing Systems for proof of delivery.

## **6 PRIVACY ACT 1993**

6.1 The Customer authorises Waterproofing Systems to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes only:

- (a) assessing the Customer's creditworthiness.
- (b) disclosing to a third party details of this application and any subsequent dealings it may have with Waterproofing Systems for the purpose of recovering amounts payable by the Customer and providing credit references.
- (c) marketing goods and services provided by Waterproofing Systems to the Customer.

6.2 The Customer, if an individual, has a right of access to information about the Customer held by Waterproofing Systems. The Customer may request correction of that information and may require that the request be stored with that information. Waterproofing Systems may charge reasonable costs for providing access to that information.

## **7 INTELLECTUAL PROPERTY**

7.1 Where Waterproofing Systems has followed a design or instruction furnished by or given by the Customer, the Customer shall indemnify Waterproofing Systems against all damages, penalties, costs and expenses of Waterproofing Systems or in respect of which Waterproofing Systems may become liable through any work required to be done in accordance with these instructions involving an infringement of a patent, trademark, registered design or common law right.

7.2 Should Waterproofing Systems be required to match any shade or colour, a light and dark tolerance shall be allowed to such an extent as shall be agreed by Waterproofing Systems and the Customer at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed.

7.3 Where the Customer supplies a mould, die, tool, printing plate or any other item used in the manufacturing process the Customer shall reimburse Waterproofing Systems for all maintenance expenses. Waterproofing Systems shall not be liable for any loss or damage to moulds, dies, tools or materials supplied by the Customer to Waterproofing Systems for the purposes of fulfilling any contract.

7.4 Printing plates, stereotypes, film, artwork and all other equipment for specific use in the manufacture of the goods (other than those supplied by the Customer) remain the property of Waterproofing Systems unless the cost thereof (including all development and costs relating thereto) shall have been fully recovered by Waterproofing Systems from the Customer in the costing of the goods already paid for by the Customer.

7.5 All information prepared by Waterproofing Systems including, without limitation, customised pricing, proposals, electronic catalogues, details of improvements and cost reductions, is the intellectual property of Waterproofing Systems and cannot be copied, altered or distributed without Waterproofing Systems' prior written consent. Waterproofing Systems will not be liable for any alterations made by you.

## **8 RETURN OF GOODS**

8.1 Waterproofing Systems will not accept the return of goods for credit or any other purpose unless Waterproofing Systems agrees to accept the return of the goods and advise the Customer a return advice number prior to the return of goods. Return of goods will only be accepted for credit within 14 days of delivery, unless due to Waterproofing Systems' error. Return freight will be at Waterproofing Systems' cost only when there has been an error on Waterproofing Systems' part.

8.2 No returned goods shall be accepted by Waterproofing Systems (even if Waterproofing Systems agree to do so) if they have been tampered with by you or any other person and are not as new, if they are goods expressly sold on a non-return basis, or if they are not accompanied by the return advice number referred to in clause 8.1. Where goods are returned to Waterproofing Systems but not accepted as above, they shall be returned to you at your expense.

8.3 Receipt by Waterproofing Systems or by any of our agents or representatives of any goods returned other than in accordance with clauses 8.1 and 8.2 shall not constitute nor be deemed to constitute Waterproofing Systems' acceptance of the return of the goods for credit or any other purpose.

8.4 Waterproofing Systems reserves the right to charge a fee of 20% for all goods returned except in the case of incorrectly supplied or faulty goods.

## **9 RISK**

9.1 Risk in the goods shall pass to you at the time when our obligations under the contract are deemed under clause 5 to be completed.

## **10 PPSA SECURITY INTEREST**

10.1 The Customer grants to Waterproofing Systems a Security Interest in the goods and their Proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligations of the Customer to Waterproofing Systems under this contract (together "the Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the indebtedness, the security interest shall also extend to all the Customers present and after acquired office equipment, supplies and stationery, of which the goods form part, to the extent required to secure the Indebtedness.

10.2 As and when required by Waterproofing Systems the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable Waterproofing Systems to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce Waterproofing Systems' Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 1999 ("PPSA").

10.3 The Customer shall not change its name without first notifying Waterproofing Systems of the new name not less than 7 days before the change takes effect.

10.4 The Customer warrants that the goods are not purchased for use primarily for personal, domestic or household purposes.

10.5 Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by Waterproofing Systems in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where Waterproofing Systems applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.

10.6 Until the Customer has paid all money owing to Waterproofing Systems the Customer shall at all times ensure that:

- (a) the goods supplied by Waterproofing Systems, while in the Customer's possession, can be readily identified and distinguished; and/or
- (b) all Proceeds (in whatever form) that the Customer receives from the sale of any of the goods are readily Identifiable and Traceable.

10.7 Where the goods are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all money owing to Waterproofing Systems, the Customer shall not sell or grant a Security Interest in the goods without Waterproofing Systems' written consent.

10.8 The parties agree to contract-out of the PPSA in accordance with Section 107 of the PPSA to the extent that Section 107 applies for the benefit of, and does not impose a burden on, Waterproofing Systems. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of Waterproofing Systems in respect of the Security Interest created by these terms and conditions of trade.

10.9 For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

## **11 GUARANTEES**

11.1 Where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees Act 1993 applies to this contract:

- (a) if any of the goods fail to comply with any guarantee in the Consumer Guarantees Act, Waterproofing Systems will repair or replace those goods as per the conditions below and limited to the terms of our product warranty;
- (b) without excluding Waterproofing Systems' obligations under the Consumer Guarantees Act 1993, the Customer acknowledges that Waterproofing Systems does not provide any Express Guarantees (as defined in that Act) other than those expressly confirmed by Waterproofing Systems in writing;
- (c) if the goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply;
- (d) if the Customer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract that the Consumer Guarantees Act 1993 does not apply in respect of the goods; and
- (e) if the Customer supplies the goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the goods without Waterproofing Systems' prior approval in writing, and the Customer must give the person buying the goods such product information relating to the goods as Waterproofing Systems requires, and the Customer agrees to indemnify Waterproofing Systems against any liability or cost incurred by Waterproofing Systems under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of these obligations.

11.2 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:

- (a) Defective goods or goods which do not comply with the contract may at Waterproofing Systems' discretion be repaired or replaced, or the price refunded.
- (b) Any right which the Customer may have to reject non-conforming or defective goods will only be effective if:
  - (i) the Customer notifies Waterproofing Systems in writing within fourteen days following delivery and Waterproofing Systems is given the opportunity to inspect the goods; and
  - (ii) the goods are returned unused, re-saleable and/or in the condition the Customer received them.
- (c) Waterproofing Systems will not repair or replace, or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.
- (d) Waterproofing Systems accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
  - (i) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
  - (ii) Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Waterproofing Systems in writing; or
  - (iii) Any services forming part of the supply of the goods which have been performed by any third party; and the Customer agrees to indemnify Waterproofing Systems against any such claim.
- (e) In any event, Waterproofing Systems' liability under any claim shall not exceed the purchase price of the goods.

11.3 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

## **12 CUSTOMER'S LIABILITY & DEFAULT**

12.1 If the Customer shall:

- (a) fail to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or
- (b) suffer execution under any judgment; or
- (c) commit an act of bankruptcy; or
- (d) make any composition or arrangement with any creditor; or
- (e) being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it,

Waterproofing Systems (in addition to any other remedies hereby or by statute conferred) may treat the contract as terminated and any part of the purchase price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right Waterproofing Systems may otherwise possess.

## **13 VARIATIONS TO TERMS AND CONDITIONS OF TRADE**

13.1 Waterproofing Systems may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer PROVIDED THAT Waterproofing Systems shall not make any variation to the nature or extent of the Security Interest granted by the Customer in clause 10.1 without the written agreement of the Customer. Waterproofing Systems may notify the Customer by delivering to the Customer an invoice with these terms and conditions of trade and receipt of the invoice by the Customer will be deemed to be acceptance by the Customer of the terms and conditions of trade.

## **14 GOVERNING LAW**

14.1 These terms of trade are governed by the laws of New Zealand.

14.2 Waterproofing Systems and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.