

WATERTIGHT SYSTEMS LIMITED - TERMS OF TRADE

In consideration of Watertight Systems Ltd ("the Company", "We" or "us") providing you, the customer ("Customer" or "you"), with waterproof membrane system installation services ("Services") and/or materials ("Materials") (together being "Work"), you agree that these Terms of Trade ("Terms") apply to and are deemed to be incorporated in all agreements we have to undertake Work for you. These terms apply to all Work undertaken by us for you unless otherwise expressly agreed in writing. They shall prevail over any terms of trade or contract provided by you to us for the Work. Your acceptance of these terms is assumed by your continuing to engage us. These Terms replace any earlier terms provided or notified to you (whether verbal or in writing), are subject to change at any time with immediate effect and you agree to be bound by any replacement Terms. We are not required to provide you with notice that the Terms have changed. A copy of the current Terms are available on the Company's website: watertightsystems.co.nz. or you can request a copy of them from us at any time.

Provision of the Works

1. We will complete Work for you with all reasonable speed and efficiency, with reasonable care and skill and with good workmanship. We will use our reasonable endeavours to meet your timing requirements and will keep you informed of progress. However, we shall not be responsible for any delays due to your failure to perform any commitments you have relating to the Work including its commencement, weather conditions, shortage of materials, strikes, lockouts, inevitable accident or any other cause beyond our reasonable control.
2. It is acknowledged that the contract price provided by us for the Work does not include additional expenses incurred by us due to changes to the Work description made at your request. We reserve the right to amend the contract price in circumstances where the final Work to be undertaken amounts to an alteration or variation which is found to be outside of the specifications of the original Work on which the contract price was provided.
3. The Company shall be entitled to rely upon the accuracy of any plans, specifications and other information provided by the Customer or the Customer's representative. It is acknowledged by you that the contract price provided by us has been based on the information supplied by you, and is subject to the accuracy of that information.
4. The Company is not responsible for the removal of rubbish from or clean-up of the worksite. This is the responsibility of the Customer or their agent.

Price

5. We will endeavour to hold any price quoted to you for Thirty (30) days. However we reserve the right to pass on to you any significant increases in the costs of materials and providing installation services, such as (but not limited to) increased labour costs and increases in the cost of the materials that may occur between the date of the quote and the date the quote is accepted by you and the materials are ordered. All quotes and estimates are GST exclusive. GST will be added upon invoicing.
6. In the event the start date is more than 90 calendar days after you accept any quote provided to you we will endeavour to hold any price quoted to you. However, we reserve the right to pass on to you any significant increases in the costs of materials and providing installation services, such as (but not limited to) increased labour costs and increases in the cost of the materials that may occur between the date you accept the quote and the date that work commences on your project.
7. In the event that your project is broken into phases, initial phases that commence within 90 days of you accepting the quote will be invoiced in accordance with the quoted price, however any phases commencing after 90 days of you accepting the quote may be subject to price increases as outlined in this clause.

Estimates

8. We will endeavour to hold any estimate given to you for three (3) months and to ensure that, if engaged by you, we do not go beyond our estimate by more than 20% of the estimated price. However we reserve the right to exceed our estimate by more than 20% if necessary and particularly to pass on to you any significant increases in the costs of providing materials and installation services, such as (but not limited to) increased labour costs and increases in the cost of the materials that may occur between the date of the estimate and the date the estimate is accepted by you and the materials are ordered.

Invoicing and Payment

9. We reserve the right to charge a non-refundable deposit towards the estimated cost of the Work as specified by us which must be paid prior to us commencing Work. That deposit shall be set off against the final invoice issued for the Work. We may issue interim invoices. Usually this will be on a monthly basis for work completed (including materials purchased) to date. We will send out a final invoice on completion of the Work. Each invoice issued by us is a 'Payment Claim' under the Construction Contracts Act 2002.
10. Other than the deposit due upon our acceptance of the Work you agree to pay our invoice(s) not later than the **20th of the month following the date** of the invoice, unless otherwise agreed in writing.
11. We reserve the right to charge penalty interest on any amount outstanding after the date it is due at a rate of 5% per annum above the current overdraft rate charged by our bank.
12. We reserve the right to suspend Work if an account is overdue for payment or we have concerns about being paid for the Work. If Work is suspended for non-payment of our account, we shall not be liable for any delays or consequential losses you may incur.
13. If any account becomes overdue for payment the full costs of collection will be payable by you in addition to the amount outstanding plus penalty interest. We reserve the right to add the collection costs to your account owing. No Ps3 or other warranty will be supplied for the Work until payment in full for the Work has been received by us. Should we not immediately enforce any of these terms & conditions then this action or omission does not in any way constitute a waiver of those terms and your obligations remain unchanged.
14. Should you request we invoice a third party for the Work you acknowledge that notwithstanding you will remain liable to pay the deposit and all invoices and charges owing for that Work to the extent they are overdue and unpaid..

Urgent Work

13. We may agree to undertake your Work urgently. This may mean allocating additional staff and/or resources to the Work. We reserve the right to increase our costs accordingly.
14. We may treat your work as urgent if it is in your best interests without advising you. The amount charged may be adjusted accordingly to take account of that urgency.

Customer Responsibilities

15. The Customer shall provide clear and free access to its worksite to enable the Works to be undertaken and will ensure that any other requirements specified by us relating to the period both prior to during and after the Works are to be completed in order for us to undertake and ensure the Works are properly carried out. The Customer shall obtain at its expense all licenses and approvals that may be required for the satisfactory completion of the Works.

No Assignment

16. The Customer shall not be entitled to assign this contract without the prior written consent of the Company which consent will be at the sole discretion of and on any conditions set by the Company. If the Customer is a company any change in control of that company shall constitute an assignment requiring the consent of the Company under this clause.

Delivery Fees

17. Where materials incur a delivery fee, we reserve the right to on-charge to you that delivery fee in addition to any quote or estimate provided to you.

Cancellation

18. We may suspend or cancel the contract to perform the Works for you at any time without notice if you fail to pay any invoice for the Work within 14 days of their due date, breach any other provision of this contract and fail to remedy it after receiving 7 days' notice from us, become insolvent, or a liquidator or receiver is appointed in respect of you or any of your property. You will still be liable in respect of the contract and must still pay to us the price but you will have no claim against us. In these circumstances you indemnify us against any costs or loss suffered arising from your actions and the suspension or cancellation of this contract by us.
19. You may only cancel the contract with us if a liquidator is appointed in respect of us or we breach the terms of the contract in any substantial manner. To cancel you must give us TEN (10) working days written notice and you are still liable to pay us, for the value of the work done or materials supplied or ordered prior to receipt of your notice.

Authorised Representative

20. If you introduce anyone to us as your representative in respect of the Work, once introduced that person shall be deemed to have the full authority to act on your behalf including without limitation requesting variations to the Work, except to the extent of any limitations on that authority you expressly communicate to us in writing at any time.

Liability

21. If you are more than one legal person, any liability you may have to us pursuant to these Terms is joint and several.
22. The Customer shall inspect and notify us in writing of any defect with the Work performed, within ten (10) days of the completion of that Work. Our liability, whether in contract or in tort or otherwise, for any loss, damage or injury arising either directly or indirectly as a result of the Work undertaken, is limited to the replacement or rectification of such defective or non-complying Materials or Services at our option as notified to us within that period. Any liability we have to you in respect of the Work performed shall not be greater than the value of the Work undertaken for you. We will use our best endeavours to pass on any warranties we receive relating to any Materials supplied.

23. We shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever. You particularly acknowledge that we shall not be liable for any loss you suffer due to a failure of Materials that is not directly caused by our work for you.

Agreement

24. The parties acknowledge and agree that the terms and conditions of this agreement shall be incorporated into every contract between the Customer and the Company.
25. All other terms, unless agreed to in writing are (to the extent permitted by law) excluded.
26. Any representation, undertaking or warranty made by the Company, or any agent or representative of the Company, unless forming part of this contract or agreed to in writing, is expressly excluded and shall not form part of the contract between us and you.

Title and Personal Property Securities Act 1999

27. The legal and beneficial ownership in all materials supplied by us to you remains with us until all the materials supplied have been paid for in full and the money received by us. For clarification, all materials should remain separate property but if the materials are accessed and become part of a greater whole, you agree that s82-86 of the Personal Property Securities Act 1999 determines priority. You acknowledge that we have a security interest ("Security Interest") (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) in any goods supplied to you in the course of completing the Works and for which we have not received payment. You will at our request promptly execute any documents, provide all necessary information and do anything else required by us to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) and which will have priority over all other Security Interests in the goods.
28. You agree, to the extent permitted by law, that you shall have no rights under sections 114(1)(a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132 and 133 of Part 9 of the PPSA.
29. You further agree that where we have rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
30. You waive your right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).
31. Despite s109(1) of the PPSA and because of s107(1) you agree that on default we can exercise the powers in s109(2).
32. If we require you to, you irrevocably appoint us to direct any lender to you to pay us directly for any amount due.

Construction Contracts Act 2002

33. If the Construction Contracts Act 2002 (CCA) applies then you agree that pursuant to Section 14 of that Act, the payment mechanisms described above apply.
34. Further, you agree that we can serve a payment claim on you pursuant to Section 20 of the CCA in accordance with those payment mechanisms and you agree that you will not provide a payment schedule in accordance with Section 21 of the CCA that is less than the amount claimed.
35. If you fail to make payment by the due date, we can obtain judgement for the unpaid amount together with its actual and reasonable costs of recovery, and where this is a commercial contract, we may serve a Notice of Intention to suspend Work under the contract.
36. If retention is withheld as part of a contract it is agreed that we will charge interest of 1.65% per month.

Compliance with Laws

37. The Company and the Customer shall comply with all statutes, regulations and bylaws of government, local and other authorities that may be applicable to the Works, including any health and safety laws relating to the building industry and any other relevant safety standards or legislation.

Intellectual Property

38. Where we have designed, drawn, written plans or a schedule of Works or created any Materials for the Customer then copyright in all such deliverables shall belong to us and may only be used by you at our sole discretion.
39. The Customer warrants that any designs, specifications or instructions given to us will not cause us to infringe any intellectual property rights and you agree to indemnify us against any action taken by a third party, costs or loss arising from such infringement.
The Customer agrees that the Company may use for the purposes of marketing or competitions any documents or images of the Works or the structure of which they form part.

Authority

40. You authorise us from time to time to obtain from the Bankers and professional advisers of you and/or other third parties all information that we reasonably require to check the credit worthiness of you and you authorise such persons to release that information.
41. All such information will be held at our registered office and can be inspected and corrected by you.

Consumer Guarantees Act 1993

42. If our services and materials are obtained for business purposes the guarantees and rights expressed or implied in the Consumer Guarantees Act 1993 in favour of you shall not apply, provided however nothing in this clause relieves us from any obligation which we may not, by law, contract out of.

Substrate Preparation

43. You shall be responsible for the preparation the building substrate to the relevant Manufacturer's Specifications as supplied to you, and to the specifications as contained in the applicable building consent.
44. In the event the substrate, in our sole opinion, does not meet the manufacturer's specifications or the applicable building consent and you required us to proceed with the installation without the substrate being rectified to Manufacturer's Specifications then you shall, prior to our commencement of the installation give us written acceptance of the decision to proceed, and accept that this will affect your workmanship and manufacturer's materials warranties as per clause 45 herein.
45. If at any future date any issues arise as a result of the inadequacy of the substrate, both the workmanship warranties and the manufacturer's materials warranty shall be void. The written authority given to us to proceed despite advice of inadequate substrate preparation shall then be a defence to any claim you may have against us in relation to the any failure of the waterproofing system due to the substrate not meeting the required specifications.

Third party Damage During and Post Installation

46. We shall not be liable for any damage to the roofing membrane caused by your actions or omissions or those of your contractors or invitees during and after installation.
47. You will be liable for the cost of any remedial work and materials if the membrane is damaged during or after its installation caused by your actions or omissions or those of your contractors or invitees.

Manufacturer's Materials Defect Warranty

48. The various manufacturers' products that we install provide comprehensive materials defects warranty for varying periods of time. We can advise on the details of each manufacturer's warranty prior to commencement of waterproofing application, and such details can be found via the individual company's website. Please note there are a number of special conditions, including annual inspections and five yearly inspections, contained in the manufacturer's materials warranty that you should be aware of. Please read that document carefully.
49. A copy of the warranty will be issued at the completion of the job, after we have received payment in full.
50. Please note we are a separate legal entity, we are not an employee of the manufacturer. We confirm that we hold a valid Certificate of Appointment as a Roofing Applicator from Nuralite Waterproofing Limited, Waterproofing Systems Ltd, and Allico Ltd which means we are an approved applicator by these companies.
51. We do not provide a materials warranty on the same terms as the Manufacturer provides. However, we will meet our obligations under the Consumer Guarantees Act (if applicable) and we will provide you with reasonable assistance should a defective materials claim be made. You acknowledge that these terms mean we do not provide any other warranties than those noted within this document.

Workmanship Warranty

52. We provide a FIVE (5) year workmanship warranty from the date of installation. This workmanship warranty shall only cover the work that we have undertaken and does not cover any defect or failure of the materials or workmanship of any other party.
53. This warranty shall be void and of no effect if:
a. the terms of payment and all other terms of this agreement are not complied with.
b. you do not give us written notice of the alleged failure or fault within 14 days of discovery of the alleged failure or fault. Time is of the essence.
54. Any remedial work completed pursuant to this workmanship warranty shall not further extend the workmanship warranty period.
55. If a warranty claim is made and subsequently not proven then any costs, we incur to investigate the claim will be payable by you.

Risk and Insurance

56. Risk in the Works passes to the Customer progressively as the Works are completed. We have public liability insurance of FIVE MILLION DOLLARS. You the Customer are responsible for taking out contract works insurance against loss or damage to the Works completed and/or consequential damage to the structure of which they form part.

Warranty to Pay Contract Price

57. You warrant that you have arranged all of the necessary finance to enable payment by you for the Services and Materials provided by us as per this agreement and for all of the further or additional work you instruct us to undertake or complete, at the times and in the manner agreed.

Dispute Resolution

58. The parties shall endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
59. Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996.
60. If the parties are unable to agree in an arbitrator then the arbitrator shall be appointed under the process set out in the Construction Contracts Act 2002 or failing that by the president of the New Zealand Law Society.