

TERMS OF TRADE

1. What is the purpose of this agreement?

1.1 This agreement sets out the terms that apply to the relationship between you (and "your") and **Total Waterproofing (2005) Limited trading as Total Waterproofing** ("we", "us" and "our").

2. What information about you can we collect?

2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement, the provision of our products and performance of our services.

2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:

- to give effect to the provision of our products and services;
- to enforce our obligations under this agreement or an additional agreement;
- when authorised by you or required by law;
- to assess credit worthiness; and
- to market any of our products and services.

2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access any of your information and ask us to correct any mistakes.

3. What are our products and services?

3.1 "Product(s)" and "service(s)" means and includes without limitation:

- waterproofing membranes and liquids and materials including termination bars, droppers and scuppers (whether provided by us, separate, attached to something or performed work on);
- supply, application, installation and delivery; and
- agency fees, charges and out of pocket expenses incurred by us,

identified in any document or electronic record issued by either party, all of which are deemed to be incorporated into and form part of this agreement, or as ours by marking or a manner of storage enabling identification.

4. What is the price?

4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses such as freight. If no price is stated, the price will be the amount at which that we provide the products and services at the time of your request. The price is subject to reasonable change due to circumstances out of our control.

5. What happens when we give you a quote?

5.1 If we give you a quote for products and services:

- the quote will be valid for sixty (60) days, unless withdrawn or stated otherwise;
- it will be exclusive of GST and freight, unless stated otherwise;
- you will be responsible for increased costs or receive the benefit of decreased costs resulting from any subsequent changes to the quote due to any inadequate or inaccurate information, request/requirement for additional products and services or alterations; and
- we may alter the quote due to circumstances beyond our control or clerical or computer error.

6. When and how do you pay us?

6.1 You agree to pay us in full:

- a deposit and the balance:
 - for credit account holders - on or before the 20th day of the month following the date of our invoice;
 - for all others - on or before the 7th day following the date of our invoice.
- interest on any amount you owe after the due date at 2.5% per month or part month;
- expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR registration, debt collection and legal fees; and
- without set-off, deduction or counterclaim.

6.2 We may require progress payments and invoice by payment claims under the Construction Contracts Act 2002.

6.3 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.

6.4 You will be responsible for payment if a third party that you expect to pay you or us fails to pay.

7. What warranties apply?

7.1 Manufacturers' and third party warranties where applicable and any warranties provided by us in writing. Our workmanship has a five year warranty.

7.2 If you are in trade and/or are a business, you agree that the parties contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 to the extent permissible by law.

7.3 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control.

7.4 Subject to applicable insurance and limitations under 7.1-7.3, if we are deemed liable to you for loss or damage of any kind, however arising including from provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort or otherwise, then you agree that our total liability is limited to the value of the products and services provided to you.

8. What if an issue arises in relation to our products or services?

8.1 We will repair or replace a defective or faulty product subject to:

- you notifying us within the warranty period (if applicable), otherwise within ninety (90) days of completion of our services;
- you being responsible for the cost of services required to rectify the defect/fault; and
- the products having been used in accordance with the manufacturer's/our instructions and not having been subject to abuse, neglect, misuse, accident or work by a unauthorised third party.

8.2 Return of a product for reasons other than fault or defect is at our discretion and subject to:

- you notifying us within ninety (90) days of completion of our services;
- the product having been used in accordance with the manufacturer's/our instructions and not having been subject to abuse, neglect, misuse, accident or work by a unauthorised third party; and
- the product being in original saleable condition.

8.3 Any products the subject of 8.2 and 8.3 must not be destroyed or removed until we have inspected the products or required they be returned to us.

9. When will the products and services be provided?

9.1 We will use our best reasonable endeavours to provide our products and services on the date and time agreed between you and us. The time and date of provision is an estimate only and not an essential term of our agreement.

9.2 We are responsible for the products until they are delivered to the site, picked up by you or when ownership passes in accordance with 11.1, whichever comes first.

10. For what are you responsible?

10.1 You are responsible for ensuring that all:

- sites where our services are being carried out comply with all relevant health and safety regulations, requirements and law;
- plans and reports on which we base our services are accurate and complete. We are not liable for errors in or variations and additions to our work where such is the result of

inaccuracy or incompleteness and you will be responsible for the cost of additional products and services required to remedy any issues;

- utility services, cables and inputs are marked or easily visible (unforeseen loss or damage will not be our responsibility);
- sites are adequately secured to protect the products and our equipment (loss or damage will your responsibility); and
- sites where our services are being carried out have a proper means of access.

11. What ownership and security rights do we have?

11.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you. While we retain ownership, you will store all products in such a way that our interests are protected and they can be identified as provided by us.

11.2 You agree that we hold security interest in all of your present and after acquired property connected with products and services provided to you, and:

- authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
- will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
- waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
- that both parties contract out of ss 114(1)(a), 133 and 134 of the PPSA;
- waive your rights as listed under s 107(2) of the PPSA; and
- to give us fourteen (14) days prior written notice of any proposed change in your name or details such as contact information.

11.3 You agree that your failure to pay for the products and services by the due date gives rise to a legal or equitable estate or interest in your land on which the products and services were carried out and affixed and that the interest entitles us to register a caveat against your land.

11.4 We own all existing and new intellectual property rights connected to the products and services. You fully indemnify us for any intellectual property infringements we may make when acting in accordance with your instructions. You may use the products only if paid in full and for the purpose for which they were intended and supplied by us.

12. What if you want to vary an order?

12.1 If you wish to vary an order:

- you must notify us in writing before application commences and quote the order number;
- both parties must agree to the variation in writing; and
- if we have reasonably relied on your original instructions then you will be responsible for payment of the original price of the products and services.

13. When can a party cancel this agreement?

13.1 Subject to 13.2-13.5, either party may cancel this agreement at any time by giving seven (7) days prior written notice.

13.2 We have the right by seven (7) days prior written notice to suspend or cancel wholly or in part this or any agreement for the provision of products and services, including delivery, if you default by:

- failing to pay or indicating you will not pay any sum owing by the due date;
- any of your creditors seizing or indicating they will seize any products provided to you;
- products in your possession becoming materially damaged while any amount remains unpaid;
- being bankrupted, insolvent, under statutory management or put into liquidation;
- a receiver being appointed over or a landlord possessing any of your assets;
- a court judgment entered against you remaining unsatisfied for seven (7) days;
- breaching the terms of this agreement; and
- an adverse material change in your financial position.

13.3 If you default we may exercise a lien against any products in our possession.

13.4 You agree that if you default and the default is not remedied within seven (7) days, we may enter any premises occupied by you to inspect or retrieve any products and you will provide reasonable access to such premises. We may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.

13.5 Cancellation under 13.1 or cancellation or suspension under 13.2 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement any amount owed by you for products and services provided up to and including the date of cancellation will become immediately payable and current orders will terminate.

14. Does a personal guarantee apply?

14.1 If you are a director of a company or the trustee of a trust:

- in exchange for us agreeing to supply products and services and/or grant credit to the company or the trust, you also sign this agreement in your personal capacity, and jointly and severally personally undertake as principal debtors, to pay everything that the company or trust owes us, and to indemnify us against non-payment and/or default; and
- any personal liability of you as director or trustee will not exclude the company or trust from the liabilities and obligations contained in this agreement.

15. What else is agreed?

15.1 We may outsource (contract out) part of the work required to perform our services, you agree to pay for all amounts due in connection with the same.

15.2 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.

15.3 Neither party may assign or transfer their rights or obligations under this agreement to any other without our prior written consent.

15.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.

15.5 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you and all arrangements between the parties are subject to these terms.

15.6 If a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising. The parties will firstly endeavour to resolve the dispute by negotiation. If the dispute is not resolved within seven (7) working days then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996.

15.7 Documentation related to this agreement may be served on you by email.

15.8 We will notify you of any changes to these terms and post the same on our website. Continued provision of products and services to you will be subject to your signed or written acceptance of the same. All other variations must be mutually agreed in writing.