

WATERTIGHT SYSTEMS LIMITED - TERMS OF TRADE

In consideration of us, Watertight Systems Ltd ("the Company", and "We") providing you, the Customer, with waterproof membrane system installation services and/or materials, you agree that these Terms of Trade apply to and are deemed to be incorporated in all agreements to provide services and/or materials that we have with you. These terms apply to all work and services undertaken by us for you unless otherwise agreed in writing. Your acceptance of these terms is assumed by your continuing to engage us. These Terms replace any earlier terms (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 and you can request a copy of the most current Terms from us at any time.

General

1. We will complete your waterproof membrane installation work with all reasonable speed and efficiency, and with reasonable care, skill and good workmanship. We will endeavour to do our best to meet your timing requirements and will keep you informed of progress however we shall not be responsible for any delays due to 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 given does not include additional expenses incurred which are necessary due to changes made at your request.
3. It is further acknowledged that the contract price given has been based on the information supplied by you, and as such is subject to the accuracy of that information.
4. We reserve the right to amend the contract price in circumstances where the final product to be supplied to you amounts to an alteration or variation which is found to be outside of the specifications on which the original contract price was provided.

Quotes

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 materials are ordered.

Estimates

6. 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 materials are ordered.

Invoicing and Payment

7. We will endeavour to interim bill regularly. Usually this will be on a monthly basis for work completed (including materials installed) to date. We will send out a final account on completion of the job.
8. You agree to pay us upon receipt of our invoice(s) on the **20th of the month following the date** of the account, unless otherwise agreed in writing.
9. 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.
10. It is not our practice to suspend work on a project pending payment of an account; however we reserve the right to do so if we deem it necessary. If work is suspended for non payment of our account we shall not be liable for any consequential losses you may incur.
11. If any account becomes overdue for non-payment, we reserve the right to pursue its recovery through a debt collection agency or other means. The full costs of collection will be payable by you in addition to the amount outstanding and penalty interest. We reserve the right to add the collection costs to your account owing.
12. 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.

Urgent Work

13. If you ask us to do your work urgently we will tell you whether or not this is possible or necessary.
14. Doing work urgently may mean allocating additional staff and/or resources to it; consequently we reserve the right to increase our quotation or estimate to cover these costs.
15. In exceptional cases we may treat your work as urgent without advising you, if it is in your best interest, you will be charged accordingly.
16. We will use our best endeavours to meet any reasonable completion deadline that you ask for and that we have agreed upon at the beginning of the job. However, you will not be able to cancel the contract and nor will we be liable to you or anyone else if the work is not completed by the deadline.

Delivery Fees

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

Retention of Ownership

18. 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.

Right to Enter Premises

19. You irrevocably give Watertight Systems Limited or our duly authorised agents the right to enter your premises or any sites where work is being undertaken for you and retake possession of materials not paid for, at any time.

Cancellation

20. We may cancel the contract at anytime without notice if you 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.
21. 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.

Authority

22. You need to tell us who has your authority to act on your behalf. If you do not tell us who has authority, we may regard anything said or written by anyone apparently having authority to act on your behalf.
23. Where this contract is entered into by an agent, the agent personally:
 - (a) Warrants that the agent has the authority to act on behalf of and to bind the Customer;
 - (b) Indemnifies us from and against all losses, costs, expenses, penalties or damages we may suffer and incur as a result of or arising out of any breach of the contract by the Customer or by the agent.

Your Liability

24. If you are more than one legal person, any liability you may have is joint and several.

Our Liability

25. 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 for you, is limited to the replacement or rectification of such defective or non-complying materials or services at our option. Under no circumstances will our liability be greater than the value of the work undertaken for you.
26. 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 product or materials that is not directly caused by our work for you.

Agreement

27. 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.
28. All other terms, unless agreed to in writing are (to the extent permitted by law) excluded.

29. 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 cancelled and withdrawn and shall not form part of the contract as between us.

Personal Property Securities Act 1999

30. 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. 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.

31. You agree, to the extent permitted by law, that you shall have no rights under the following provisions of Part 9 of the PPSA to:

- receive a notice under section 114(1)(a);
- receive a statement of account under section 116;
- surplus distributed under section 117;
- recover any surplus under section 119;
- receive notice of any proposal we make to retain collateral under section 120(2);
- object to any proposal we have to retain collateral under section 121;
- not have goods damaged in the event that we were to remove an accession under section 125;
- receive notice of the removal of an accession under section 129;
- apply to the Court for an order concerning the removal of an accession under section 131; and
- redeem collateral under section 132;
- reinstate the contract under section 133.

32. You further agree that where we have rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.

33. You waive your right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).

34. Despite s109(1) of the PPSA and because of s107(1) you agree that on default we can exercise the powers in s109(2).

35. If we require you to, you irrevocably appoint us to direct any lender to pay us directly for any amount due.

Construction Contracts Act 2002

36. 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.

37. 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.

38. 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.

39. If retention is withheld as part of a contract it is agreed that we will charge interest of 1.65% per month.

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 requires 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 Allco 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.

Public Liability Insurance

56. We confirm that we have public liability insurance of FIVE MILLION DOLLARS.

Goods and Services Tax (GST)

57. All quotes and estimates are GST exclusive. GST will be added upon invoicing.

Warranty to pay contract price

58. 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.