

**JOHN DUFF ROOFING (2016) LIMITED
TERMS OF TRADE**

In these Terms of Trade we have used "we", "us", and "our" to refer to John Duff Roofing (2016) Limited and "you" to refer to our customer. By ordering Work from us, you agree to these Terms of Trade to the exclusion of your terms (if any). These Terms of Trade are also deemed to include and incorporate the terms of any written quote accepted by you in accordance with these Terms of Trade, the content of the quote and any disclosure information we are required to give you under section 362D of the Building Act 2004.

OWNERSHIP, RISK AND DELIVERY OF MATERIALS

Ownership of Materials supplied by us to you under these Terms of Trade remains with us until payment for the Materials is made in full.

Delivery occurs at the time Materials are delivered into your (or a person nominated by you) possession and/or delivered to the site at which they are to be installed. The risk in Materials supplied passes to you on delivery. Without limitation to the foregoing, any loss to the Materials arising from theft, destruction or damage from whatever cause shall be borne by you. We are under no obligation to arrange any contract works insurance or notify any person's insurer of the Works or Materials being delivered.

ESTIMATES AND QUOTES

Unless expressly labelled in writing by us as a quote, any price we give you for Work is an estimate ("the Estimate") exclusive of GST of the anticipated cost for us to complete that Work. Where we provide a quote to you ("Quote"), the Quote is open for acceptance for 30 days after it is dated unless withdrawn by us prior to acceptance and unless specified otherwise in writing is exclusive of GST and GST shall be paid in addition to the amount quoted.

You are solely responsible for the accuracy of any information that you provide to us (including, without limitation, measurements, quantities, plans) for the purpose of providing an Estimate or Quote to you.

Any Estimate or Quote is strictly for the Work expressly specified in the Estimate or Quote and does not include any allowance for (i) unforeseen work required (such as replacing rotten roof battens, poor weather conditions, limitations to accessing the site, obscured building defects, safety considerations, prerequisite work or services by you or any third party not being completed at all or not being completed to the necessary standard, error in design, or hidden pipes and wiring, extra work and Materials being required due to incorrect information being provided to us or similar matters); or (ii) for additional work not included in the estimate or Quote that you request that we complete (each a "Variation"). You shall pay us the Actual Cost in accordance with clause 3.1 for any work we complete that is a Variation. You authorise us to complete any work that is a Variation if that work is incidental to, and reasonably necessary in order to complete, the Work you have previously engaged us to complete or where you otherwise instruct us to do so (whether in writing or verbally).

We will not commence Work the subject of a Quote until you have accepted the Quote in writing or by other means acceptable to us in our sole discretion.

PRICE

Where we carry out any Work for you that is not included in a Quote (including any Variation and/or Work carried out on a 'charge-up' basis), the price of completing the Work ("the Actual Cost") will be calculated by totalling the following amounts:

- the number of hours of service multiplied by the hourly rates for the workers involved on the date which the Work is undertaken or if the supply occurs over more than one day, the relevant hourly rates on the last day on which services are rendered;
- any disbursements (including without limitation delivery costs) incurred by us on your behalf plus our usual margin;
- the cost of any Materials supplied by us as part of the Work plus the margin agreed (or where no margin is agreed, our usual margin).

The price payable by you for the Work will be (i) the Actual Cost; and/or (ii) where and to the extent applicable the price set out

in our Quote, plus GST and any other taxes which are payable by you in New Zealand dollars.

In the event these Terms of Trade are terminated in accordance with clause 8.2(c) or by you under clause 15 prior to completion of the Work, you must immediately pay us the Actual Cost at the termination date.

TERMS OF PAYMENT

Payment for the Work is due on the 10th day following the date of our invoice and payment claim (the "Due Date").

Where applicable our invoice shall include a payment claim under the Construction Contracts Act 2002. Unless otherwise agreed in writing, we shall have the right to claim one progress payment each calendar month and, where applicable, make a final payment claim immediately upon completion (whether or not completion takes place in the same calendar month as a prior progress payment claim). If you wish to provide a payment schedule responding to our payment claim, you must provide the payment schedule within 5 days of us providing our payment claim to you.

If you do not make payment on the Due Date, you are in default and must pay default interest on the amount due at a rate of 10% per annum, calculated on a daily basis until payment is received.

Where any of the circumstances in section 24A(1)(a) of the Construction Contracts Act 2002 applies, without limiting any other rights that we have, we may suspend the performance of the Works in the circumstances and subject to the conditions set out in that Act.

You must make payment of all money due to us under these Terms, or for any Work performed, without any deduction or set-off of any kind by direct payment to us as we direct from time to time. We will apportion payments received from you to outstanding accounts as we think fit.

PERFORMANCE OF WORK

We will:

- Use reasonable endeavours to ensure that the Work is performed in accordance with any time frames agreed in writing with you (but time for completion shall not be of the essence and we shall not be liable to you for any matter arising as a result of the delay);
- Liaise with you during the course of performing the Work in accordance with your reasonable requirements; and
- Where we are carrying out "building work" under a "residential building contract" (as those terms are defined in section 362B of the Building Act 2004):
 - we will provide you with the checklist and disclosure required (where the relevant circumstances apply);
 - we provide the warranties implied by section 362I to 362K of the Building Act 2004; and
 - will comply with the requirement to remedy defects in accordance with section 362Q of the Building Act 2004.

You will:

- ensure that there is reasonable and safe access to the site at which the Works are to be completed for delivery of Materials and performance of the Work;
- be responsible for obtaining building consents, and any other consents or approvals required, for us to carry out the Works;
- ensure that any services or provisions that we agree that you are to supply in order to enable us to carry out the Work (such as scaffolding) will be (as applicable) supplied in a proper and workman like manner, installed to professional standards and compliant with all relevant legal obligations (including Health and Safety requirements);

give reasonable assistance to enable us to perform the Work by:

- giving clear instructions and respond to any queries or requests by us within 1 day; and
- promptly providing any information or content required from you for us to complete the Work.

You agree that as Materials may vary slightly in colour between suppliers and production runs, we will not be held liable in any way whatsoever where such variations occur.

PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

All terms in this clause 6 have the meaning given in the PPSA and section references shall be to sections of the PPSA. Clause 1.1 creates a security interest in Materials we supply to you as part of the Work. You shall not grant any other security interest or any lien over Materials that we have a security interest in. At our request you shall promptly sign any documents and do anything else required by us to ensure that our security interest constitutes a first ranking perfected security interest in the Materials. If the Materials are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA. You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA). You will give us prior written notice of a proposed change of your name or address.

WARRANTIES AND LIMITATION OF LIABILITY

Most Materials we supply come with a manufacturer's warranty, which are typically subject to maintenance requirements being undertaken by you. We pass those manufacturer's warranties to you under these Terms but do not provide, to the maximum extent permitted by law, any other warranties about the Materials. You must comply with maintenance requirements under applicable manufacturer's warranties in order to obtain the benefit of such warranties. We will give you details of any manufacturer's warranty and associated maintenance requirements where we are required to do so by law or where you request the same from us in writing.

We warrant that the Work will be free from defects in workmanship for a period of five (5) years following completion of the relevant Work.

The Building Act 2004, Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose guarantees, warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. Except as expressly provided for in these Terms, we exclude all such imposed guarantees, warranties, conditions or obligations (as well as any imposed or implied under common law, equity or otherwise) to the maximum extent permitted by law.

Where you acquire goods and services from us for business purposes, you acknowledge and agree that: (i) the guarantees contained in the Consumer Guarantees Act 1993 are excluded as you are acquiring the Goods for the purposes of a business in terms of sections 2 and 43 of that Act; and (ii) the Goods are supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and that we and you contract out of sections 9, 12A, and 13 of that Act. Where the contract between us is not a "residential building contract" as defined in section 362B of the Building Act 2004, the warranties implied by that Act under residential building contracts do not apply.

To the maximum extent permitted by law we are not liable to you for any defect in workmanship or Materials as a result of: (a) damage caused by you or other persons, including subsequent trades; (b) any failure by you to follow any instructions as to the use and/or maintenance of the Works or Materials; (c) any alteration or repair of the Works or Materials without our written approval; or (d) any other cause outside of our reasonable control.

To claim under the warranty in clause 7.2, you must give us written notice of any failure of the Works to comply with that warranty

and allow us a reasonable opportunity to inspect and test and assess the alleged failure.

Notwithstanding any other provisions of these terms, to the maximum extent permitted by law, we are not liable under any warranty or guarantee for Materials or workmanship until payment is received in full from you.

Except to the extent expressly provided for in these Terms or to the extent the law prevents us from excluding liability:

we shall not be liable to you for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work or Materials provided by us to you; and

our maximum liability to you will be, at our discretion: (i) to repair or replace the defective Works or Materials in question at our own cost and expense; or (ii) refund you the invoice price of the defective Works or Materials.

DEFAULT

The security interests created by these Terms of Trade become enforceable if any of the following events occur:

- you fail to pay any money owing on the Due Date;
- you sell, part with possession or dispose of any Materials or do anything inconsistent with our ownership of the Materials prior to making payment in full to us;
- we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
- the Materials are at risk, as that term is defined in the PPSA;
- you neglect or fail to carry on your business to our reasonable satisfaction, or if there is a significant deterioration in your trading or asset position;
- you are otherwise in breach of your obligations under these Terms of Trade.

If any of the events described in clause 8.1 occur, in addition to any remedies we may have at law, we may do one or more of the following:

- charge default interest in accordance with clause 4.3;
- enter on to your premises and repossess any Materials which have not been paid for in full including taking any necessary steps to unfix the Materials if they are attached to any other materials, building or structure and will indemnify us against all costs and liabilities incurred in doing so; and
- immediately terminate these Terms of Trade by notice in writing to you.

INTELLECTUAL PROPERTY

If any Work is to be undertaken based on your designs, you warrant that the undertaking of the Work by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the Work infringes any patent, copyright or other rights of any other person.

PRIVACY OF INFORMATION

You authorise us:

- to collect, retain, disclose and use information about you from any person for the purpose of assessing your creditworthiness;
- to disclose information about you:
 - to any person who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.

NOTICES

Any notice by us to you may be given by phone, in person, posted, or sent by email to the contact details that we get from you. Where you are a company, we may also give a notice in the same manner to any of your directors. Any notice or certificate by you to us must be given by in person, posted, or sent by email to the contact details as follows: PO Box 4282, Kamo, Whangarei and email: john@whangareiroofer.co.nz.

VARIATION

We shall be entitled at any time by either publishing the updated version to our website, <https://www.whangareiroofers.co.nz/>, or notifying you in writing with a copy of the updated version. The updated Terms shall apply to Work that is:
included in a Quote where the Quote is accepted after the time of such publication or notification of the updated Terms (whichever was the first); and
not included in a Quote where the Work is commenced after the time of publication or notification of the updated Terms (whichever was the first).

CONFIDENTIALITY

You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

COSTS

You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of your obligations and/or our rights, remedies and powers under these Terms of Trade, including without limitation your obligation to pay the amounts due to us under these Terms.

TERMINATION

We may terminate these Terms of Trade by giving one month's written notice to you. On termination you must pay us for all Work performed and Materials supplied.

JURISDICTION

These Terms of Trade are governed by and construed in accordance with the current laws of New Zealand and the parties agree subject to clause 18 to submit to the non-exclusive jurisdiction of the Courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms of Trade.

ASSIGNMENT AND SUBCONTRACTING

You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade. We may subcontract or assign our rights, powers or obligations under these Terms, including, without limitation to the foregoing, engaging subcontractors to perform all or part of the contracted Work.

DISPUTES

Without limitation to the parties rights to require adjudication under the Construction Contracts Act 2002, any claim or dispute arising under these Terms of Trade shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any urgent equitable relief before the New Zealand Courts.

FORCE MAJEURE

We shall not be liable for delay or failure to perform the Work if the cause of delay or failure is beyond our reasonable control.

SURVIVAL

The provisions of this clause 20 and of clauses 1, 4, 6, 7, 8, 9, 10, 11, 13, 14, 16, 18, and 21 of these Terms of Trade and any other provision which by its nature is intended to survive the termination or expiration of these Terms of Trade will survive the termination or expiration of these Terms of Trade or completion of the Work.

DEFINITIONS

In these Terms of Trade:

“Materials” means all materials supplied by us to you.

“Intellectual Property” includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).

“Work” means our performance of services for you, and the production or supply of any Materials by us as part of or related to such services, as described on the front page of these Terms of Trade.

The rule of construction known as the contra proferentem rule does not apply to these Terms of Trade.

Words importing the singular include the plural and vice versa.

Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms of Trade.

References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.

References to a statute include references to:

regulations, orders, rules or notices made pursuant to that statute;

all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and

any statute passed in substitution of that statute.

References to “us” include our employees, contractors and agent