

## **TERMS AND CONDITIONS OF QUOTATIONS FROM MAINLAND ROOFING (2005) LTD**

### **1. DEFINITIONS**

- 1.1 Mainland Roofing (2005) Ltd shall mean Mainland Roofing (2005) Ltd or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer or any person purchasing products and services from Mainland Roofing (2005) Ltd.
- 1.3 "Products" shall mean:
- 1.3.1 all Products of the general description specified in the quote agreement and supplied by Mainland Roofing (2005) Ltd to the Customer; and
- 1.3.2 all Products supplied by Mainland Roofing (2005) Ltd to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by Mainland Roofing (2005) Ltd; and
- 1.3.4 all Products supplied by Mainland Roofing (2005) Ltd and further identified in any invoice issued by Mainland Roofing (2005) Ltd to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Products that are marked as having been supplied by Mainland Roofing (2005) Ltd or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Mainland Roofing (2005) Ltd; and
- 1.3.6 all of the Customer's present and after-acquired Products that Mainland Roofing (2005) Ltd has performed work on or to in which goods or materials supplied or financed by Mainland Roofing (2005) Ltd have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products" shall also mean all products, goods, services and advice provided by Mainland Roofing (2005) Ltd to the Customer and shall include without limitation the distribution and sale of product and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products by Mainland Roofing (2005) Ltd to the Customer.
- 1.5 "Price" shall mean the cost of the Products as agreed between Mainland Roofing (2005) Ltd and the Customer and includes all disbursements e.g. charges Mainland Roofing (2005) Ltd pay to others on the Customer's behalf (subject to clause 4) of this contract.

### **2. ACCEPTANCE**

- 2.1 Any instructions received by Mainland Roofing (2005) Ltd from the Customer for the supply of Products shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### **3. COLLECTION AND USE OF INFORMATION**

- 3.1 The Customer authorises Mainland Roofing (2005) Ltd to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any products provided by Mainland Roofing (2005) Ltd to any other party.
- 3.2 The Customer authorises Mainland Roofing (2005) Ltd to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993

### **4. PRICE**

- 4.1 Where no price is stated in writing or agreed to orally, the Products shall be deemed to be sold at the current amount as such Products are sold by Mainland Roofing (2005) Ltd at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of Mainland Roofing (2005) Ltd between the date of the contract and delivery of the Products.

### **5. PAYMENT**

- 5.1 When acceptance is made of a written quote the customer shall pay Mainland Roofing (2005) Ltd a 60% deposit, the balance due as per section 5.2 following.
- 5.2 Final payment for goods shall be made within 14 days of the date of the invoice unless otherwise in writing between Mainland Roofing (2005) Ltd and the customer. ("the due date").
- 5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements and legal costs incurred by Mainland Roofing (2005) Ltd in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.6 Failure to make payment for goods supplied or monies due under these terms and conditions will result in credit reporting agencies being notified of the customers default.

### **5. QUOTATION**

- 6.1 Where a quotation is given by Mainland Roofing (2005) Ltd for Products:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- 6.1.2 The quotation shall be inclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 Mainland Roofing (2005) Ltd reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products.

### **6. RISK & INSTALLATION**

- 7.1 The Products remain at Mainland Roofing (2005) Ltd's risk until installed at the address of the customer. Unless damaged or misplaced by the customer.
- 7.2 Mainland Roofing (2005) Ltd will endeavour to supply and/or supply and install products within an agreed time frame, barring circumstances outside its control such as weather and supply.

### **7. QUANTITY**

- 8.1 Other than stock items Mainland Roofing (2005) Ltd cannot guarantee to deliver the exact quantity of Products which the Customer has ordered and deliveries of 10% more or less than the quantity ordered shall constitute performance of the order. In such instances a pro-rata charge or deduction will apply.

### **8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**

- 9.1 Title in any Products supplied by Mainland Roofing (2005) Ltd passes to the Customer only when the Customer has made payment in full for all Products provided by Mainland Roofing (2005) Ltd and of all other sums due to Mainland Roofing (2005) Ltd by the Customer on any account whatsoever. Until all sums due to Mainland Roofing (2005) Ltd by the Customer have been paid in full, Mainland Roofing (2005) Ltd has a Purchase Money Security Interest as that term is defined in the Personal Property Security Act 1999 in all Products.
- 9.2 If the Products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products shall remain with Mainland Roofing (2005) Ltd until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to be assigned to Mainland Roofing (2005) Ltd as security for the full satisfaction by the Customer of the full amount owing between Mainland Roofing (2005) Ltd and Customer.
- 9.3 The Customer gives irrevocable authority to Mainland Roofing (2005) Ltd to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Mainland Roofing (2005) Ltd believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. Mainland Roofing (2005) Ltd shall not be liable for any costs, damages, expenses or losses incurred by the

Customer or a third party as a result of this action, by statute such liability cannot be excluded. Mainland Roofing (2005) Ltd may either resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Customer's account with the invoice value thereof less such sum as Mainland Roofing (2005) Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 9.4 Where Products are retained by Mainland Roofing (2005) Ltd pursuant to clause 9.3 the Customer waives the right to receive notice under S.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under S.121 of the PPSA.

- 9.5 The following shall constitute defaults by the Customer:

- 9.5.1 Non payment of any sum by the due date.

- 9.5.2 The Customer intimates that it will not pay any sum by the due date.

- 9.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.

- 9.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to Mainland Roofing (2005) Ltd remains unpaid.

- 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or landlord distains against any of the Customer's assets.

- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

- 9.5.7 Any material adverse change in the financial position of the Customer.

### **10. PAYMENT ALLOCATION**

- 10.1 Mainland Roofing (2005) Ltd may at its discretion allocate any payment received from the Customer towards any invoice that Mainland Roofing (2005) Ltd determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Mainland Roofing (2005) Ltd, payment shall be deemed to be allocated in such manner as preserves the maximum value of Mainland Roofing (2005) Ltd's purchase money security interest in the Products.

### **11. CLAIMS**

- 11.1 No claim relating to the Products will be considered unless made within seven (7) days of installation.

- 11.2 No claims will be considered for Products that are not a manufacturer's standard stock.

### **12. LIABILITY**

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Mainland Roofing (2005) Ltd which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Mainland Roofing (2005) Ltd, Mainland Roofing (2005) Ltd's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

- 12.2 Except as otherwise provided by clause 12.1 Mainland Roofing (2005) Ltd shall not be liable for:

- 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products by Mainland Roofing (2005) Ltd to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products provided by Mainland Roofing (2005) Ltd to the Customer; and

- 12.2.2 The Customer shall indemnify Mainland Roofing (2005) Ltd against all claims and loss of any kind whatsoever, however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Mainland Roofing (2005) Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Mainland Roofing (2005) Ltd its agents or employees in connection with the Products.

### **13. WARRANTY**

- 13.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Products except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.

- 13.2 In particular information regarding weights, measurements, powers, capacities, performance and other data generally relating to Mainland Roofing (2005) Ltd Products contained in the advertising, catalogues, price lists, illustrations or other similar matter, printed or electronic, submitted to the Customer whilst given in good faith must be regarded only as approximate and intend to present to the Customer a general guide, the accuracy of which the Customer must test for itself. The Customer shall be deemed to rely upon its own judgment as to the nature and quality of the Company's products and their suitability for its purposes and not upon any representation made by Mainland Roofing (2005) Ltd, its servants or agents either orally or in writing (including any advertisements).

- 13.3 Product warranties can be viewed on the Mainland Roofing (2005) Ltd website or the NZ Steel or PCC websites

- 13.4 Installation warranty is 5 years on workmanship is applied to all work carried out by Mainland Roofing (2005) Ltd, unless specified around leaks.

### **14. CONSUMER GUARANTEES ACT**

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products from Mainland Roofing (2005) Ltd for the purposes of a business in terms of section 2 and 43 of that Act.

### **15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

- 15.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Mainland Roofing (2005) Ltd agreeing to supply Products and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Mainland Roofing (2005) Ltd the payment of any and all monies now or hereafter owed by the Customer to Mainland Roofing (2005) Ltd and indemnify Mainland Roofing (2005) Ltd against non payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

### **16. MISCELLANEOUS**

- 16.1 Mainland Roofing (2005) Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

- 16.2 Failure by Mainland Roofing (2005) Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Mainland Roofing (2005) Ltd has under this contract.

- 16.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

### **17. DISPUTE RESOLUTION**

Mediation - any dispute arising as a result of this Contract shall be referred to mediation by a single mediator if one person is agreed upon, or failing agreement then such a mediator nominated by RANZ (The Roofing Association of New Zealand) of which Mainland Roofing (2005) Ltd is a member.

Arbitration - any such dispute arising out or relating to this contract which is not resolved by mediation under this clause 17(a) above, shall be determined by arbitration in accordance with New Zealand Law. The Arbitrator shall be agreed upon by the parties and should they fail to agree within twenty one (21) days, then that Arbitrator shall be appointed by the President for the time being of the Canterbury District Law Society.