

Terms of trade – RDW Roofing Pty Ltd (ABN 79 167 247 743)

1 Definitions and interpretation

1.1 Definitions

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with RDW Roofing's then current prices; and
- (b) expenses incurred by RDW Roofing, at the Customer's request or reasonably required as a result of the Customer's conduct.

Associated Roof Items means any and all gutters, flashings, roof penetrations (including, but not limited to, air conditioning units and chimneys) and other such items existing on the Customer's roof.

Customer means the person identified on a Quote as the customer and includes the Customer's agents and permitted assigns.

Materials means any materials supplied by RDW Roofing including those supplied in the course of carrying out the Work.

PPS Law means:

- (a) the Personal Property Securities Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quote means a written description of the Work to be provided, an estimate of RDW Roofing's charges for the performance of the required Work and an estimate of the time frame for the performance of the Work.

RDW Roofing means RDW Roofing Pty Ltd (ABN 79 167 247 743).

Work means the specific services to be performed and materials to be supplied by RDW Roofing as set out in the Quote.

2 Acceptance

- (a) These terms of trade can be accepted by the Customer in writing, or by conduct by continuing to deal with RDW Roofing to carry out the Work on the basis of the Quote.
- (b) It is not necessary for these terms of trade to be signed. The Customer will be bound by the terms of trade if the Customer acts in a manner that is consistent with the terms of trade and any Quote issued to it by RDW Roofing.

3 Quotes

- (a) RDW Roofing may provide the Customer with a Quote. Any Quote issued by RDW Roofing is valid for thirty (30) days from the date of issue.

- (b) Quotes are based upon the cost of Materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to RDW Roofing.
- (c) Following provision of a Quote to the Customer, RDW Roofing is not obliged to commence the Work until the Quote has been accepted by the Customer. The Quote may be accepted in writing, or by conduct by continuing to deal with RDW Roofing to carry out the Work in accordance with the Quote.
- (d) Upon acceptance of the Quote, RDW Roofing may require the Customer to pay a deposit of an amount determined by RDW Roofing in its absolute discretion.
- (e) RDW Roofing reserves the right to amend any Quote before it has been accepted by the Customer in writing to take into account any rise or fall in the cost of carrying out the required Work. RDW Roofing will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote to these terms of trade.
- (f) An indication in a Quote of the time frame for the provision of Work is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law ("ACL"), this estimate is not binding upon RDW Roofing.
- (g) A Quote does not include anything that is not explicitly referred to including, but not limited to, scaffolding costs and Material delivery.
- (h) Unless otherwise stated, a Quote for the Work is based on the assumption that all structural members and other components are in sound condition. If any conditions are encountered that are not visible upon initial inspection, the Customer agrees to pay RDW Roofing any additional costs and expenses that may be necessary based upon RDW Roofing's then current prices and as agreed to by both parties.

4 Variations

- (a) The Customer may request a variation to the Work by providing a request in writing to RDW Roofing. A request for a variation must be agreed to in writing by RDW Roofing in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by RDW Roofing, RDW Roofing reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current prices. A revised Quote issued by RDW Roofing in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote.
- (c) RDW Roofing has an automatic extension of time to carry out the Work equal to the delay caused by the variation.

5 Invoicing and payment

- (a) RDW Roofing will invoice the Customer at the completion of the Work without any deductions, but reserves the right to invoice the Customer at any time during the performance of the Work.
- (b) The amount payable by the Customer will be the amount set out in the invoice, which must be paid to RDW Roofing within seven (7) days of a valid invoice being issued to the Customer.
- (c) If any invoice is due but unpaid, RDW Roofing may withhold the provision of any further Work until overdue amounts are paid in full.

- (d) RDW Roofing may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to RDW Roofing.
- (e) The Customer is not entitled to retain any money owing to RDW Roofing regardless of any default or alleged default by RDW Roofing of these terms of trade, including (but not limited to) the provision of Work to an inadequate standard, a delay in the provision of the Work or if the Customer has made a claim under the warranty provisions of these terms of trade. If the Customer does not comply with this clause, RDW Roofing is entitled to exercise a lien in respect of the unpaid amount in accordance with the *Building Industry and Security of Payment Act 2009* (Tas). Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.
- (f) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of RDW Roofing, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (g) The Customer and RDW Roofing agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST

6 Additional Charges

- (a) RDW Roofing may require the Customer to pay Additional Charges in respect of costs incurred by RDW Roofing as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by RDW Roofing in order for it to carry out the Work within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
 - (i) cancellation by the Customer that results in loss to RDW Roofing;
 - (ii) Government or council taxes or charges not included in the Quote; or
 - (iii) additional work required by RDW Roofing or any other occurrence which causes RDW Roofing to incur costs in respect of the Work additional to the quoted cost.

7 Title and risk

- (a) Risk in the Materials passes to the Customer immediately upon delivery.
- (b) Property and title in the Materials supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between RDW Roofing and the Customer) due and payable to RDW Roofing by the Customer have been fully paid.
- (c) Where Materials supplied by RDW Roofing for the Work are left in the possession, custody or power of the Customer and payment has not been made in full by the Customer, the Customer:
 - (i) is a bailee of the Materials until property in them passes to the Customer;
 - (ii) irrevocably appoints RDW Roofing to be its attorney to do all acts and things necessary to ensure the retention of title to the Materials including the registration of any security interest in favour of RDW Roofing with respect to the Materials under applicable law;
 - (iii) must not allow any person to have or acquire any security interest in the Materials;

- (iv) the Customer grants an irrevocable licence to RDW Roofing or its agent to enter the Customer's premises in order to recover possession of the Materials pursuant to this paragraph. The Customer indemnifies RDW Roofing for any damage to property or personal injury which occurs as a result of RDW Roofing entering the Customer's premises.
- (d) Where Materials that are supplied for the Work are left in the possession, custody or power of the Customer by RDW Roofing without payment in full of all moneys payable in respect of the Materials or any other aspect of the Work in respect of those Materials, the Customer acknowledges that RDW Roofing has a right to register and perfect a personal property security interest.
- (e) If:
 - (i) a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or RDW Roofing determines (based on legal advice) that this is the case; and
 - (ii) in RDW Roofing's opinion, the PPS Law:
 - (A) does or will adversely affect its security position or obligations; or
 - (B) enables or would enable its security position to be improved without adversely affecting the Customer,

RDW Roofing may give notice to the Customer requiring the Customer to do anything (including amending these terms of trade or execute any new terms and conditions) that in the opinion of RDW Roofing is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 7(e)(ii)(A) or improve the security position as contemplated in paragraph 7(e)(ii)(B). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, and in the opinion of RDW Roofing its security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, RDW Roofing may by further notice to the Customer cancel these terms of trade. If this occurs, the Customer must pay to RDW Roofing any money owed to RDW Roofing by the Customer immediately.

- (f) RDW Roofing is not obliged to give the Customer any notice, document or information under PPS Law unless the provision of the notice, document or information is required by the PPS Law and cannot be excluded. The Customer consents to waive any right it may have to receive such notice, copy of document or information.

8 Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within fourteen (14) days of being given notice by RDW Roofing to do so;
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;

- (B) a receiver, receiver and manager or an administrator under part 5.3A of the Corporations Act 2001 (Cth) being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (D) any assignment for the benefit of creditors;
- (iv) the Customer purports to assign its rights under these terms of trade without RDW Roofing's prior written consent; or
- (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by RDW Roofing, RDW Roofing may:
 - (i) terminate these terms of trade;
 - (ii) refuse to carry out the Work or any further Work;
 - (iii) retain (where applicable) all money paid by the Customer on account of Work performed.
- (c) In addition to any action permitted to be taken by RDW Roofing under paragraph 8(b), on the occurrence of an event of default all invoices will become immediately due and payable.

9 Exclusions and limitation of liability

- (a) The Customer must inspect all Materials supplied and installed by RDW Roofing as part of the Work upon completion of the Work and notify RDW Roofing within seven (7) days of completion in writing of any defect or damage, shortage in quantity or failure to comply with the description or Quote. Upon such written notification, the Customer must allow RDW Roofing to inspect the alleged defect or damage.
- (b) RDW Roofing is not liable for defects or damage occurring in the Materials supplied and installed by RDW Roofing as part of the Work that were not caused by RDW Roofing. To the extent permitted by law, this includes, but is not limited to consequential damage (whether structural or otherwise) or failure due to accidental damage, impact, misuse or negligence of any third party. The Customer expressly agrees that RDW Roofing will charge its then current prices if the Customer requests RDW Roofing to rectify such a defect or damage.
- (c) The Customer acknowledges that the Work may be affected by the structure of the roof and any Associated Roof Items. To the extent permitted by law, RDW Roofing is not liable in any way for any defective Work where such defective Work is caused or affected (directly or indirectly) by the roof structure and/or any Associated Roof Items. If RDW Roofing determine that work additional to the Quote is required as a result of the roof structure and/or any Associated Roof Items, or if the Customer requires RDW Roofing to perform any additional work to rectify defects caused by the roof structure and/or any Associated Roof Items, RDW Roofing is entitled to charge its then current prices to carry out the additional work.
- (d) RDW Roofing is not responsible for ensuring that the roof structure and/or any Associated Roof Items are compliant with Australian and/or industry standards. Any issues relating to matters that were not included in a Quote remain the responsibility of the Customer and RDW Roofing accepts no liability for such matters.

- (e) RDW Roofing is not liable for defects or damage of any kind which result from fire, flood, strike, third parties, acts of God, or any other circumstances that are beyond the control of RDW Roofing including but not limited to severe weather.
- (f) To the full extent permitted by law, RDW Roofing's liability for breach of any term implied into these terms of trade by any law is excluded.
- (g) Under no circumstances is RDW Roofing or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Materials or the Work performed. This includes their form, content and timeliness of deliveries, failure of performance, error, omission or defect.
- (h) Any advice, recommendation, information, assistance or service given by RDW Roofing in relation to the Materials supplied, the Work, or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. RDW Roofing does not accept any liability or responsibility for any loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (i) To the fullest extent permissible at law, RDW Roofing is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Materials or carry out the Work, or otherwise arising out of the provision of the Materials or the Work, whether based on terms of trade, negligence, strict liability or otherwise, even if RDW Roofing has been advised of the possibility of damages.
- (j) RDW Roofing is not liable for the growth of any mold, moss, lichen or other such organism that may occur following performance of the Work. The Customer acknowledges that RDW Roofing will charge its then current prices if the Customer requires RDW Roofing to perform any additional work in relation to any mold, moss, lichen or other such organism.
- (k) The ACL may give to the Customer certain consumer guarantees, which cannot be restricted, limited or varied.
- (l) If the Customer is not a "consumer" within the meaning of the ACL, RDW Roofing's liability for any defect or damage is limited to, at the discretion of RDW Roofing:
 - (i) the value of any express warranty or warranty card provided to the Customer by RDW Roofing; or
 - (ii) any warranty to which RDW Roofing is entitled to claim against the manufacturer of the Materials, if RDW Roofing did not manufacture them itself.

10 Workmanship Warranty

- (a) In addition to any relevant statutory warranties, RDW Roofing warrants to the Customer that:
 - (i) all Materials will be suitable and of good quality, and are fit for the purposes for which materials of the kind are commonly supplied;
 - (ii) the Work will follow all relevant laws and legal requirements and will be in accordance with all the relevant Australian Standards;

- (iii) the Work will be completed in accordance with the specifications of the manufacturer of the Materials and any plans and specifications agreed between the parties; and
 - (iv) the Work will be carried out with due care and skill, and will be free of defects.
- (b) The above warranties last for a period of ten (10) years from the date of completion of the Work (“the Warranty”). If a valid claim is received by RDW Roofing, all efforts will be made to rectify the defect in accordance with these terms and conditions. RDW Roofing will pay all reasonable costs associated with the rectification of the defect, including disposal, re-installation, and cartage where it deems a valid claim has been made in its absolute discretion.
- (c) All claims made to RDW Roofing in relation to any defect must be made in writing and must include the nature of the defects. The Customer must allow RDW Roofing reasonable access to the property to inspect and test the alleged defect or damage within a reasonable time following notification.
- (d) RDW will, at its option, repair or replace the defective Work. Any replacement Work will then be covered by the remainder of the Warranty.
- (e) Where repairs and/or replacement is necessary, the Customer will provide RDW Roofing with reasonable access to the property for that purpose.
- (f) In addition to any exclusions of liability specified in these terms of trade, the Warranty does not extend to:
- (i) any work that was not performed by RDW Roofing or any work where there has been subsequent third party work performed;
 - (ii) normal wear and tear;
 - (iii) variations in colour and shade of Materials;
 - (iv) Work that the Customer has not maintained in accordance with any written guidelines or recommendations provided by RDW Roofing; and
 - (v) Claims that arise out of or are connected with incorrect, inaccurate or negligent information, advice or building work provided by the Customer or its agents, contractors or advisers.
- (g) To the extent permitted by law, RDW Roofing does not provide any warranty with respect to the Materials. Any warranty card or certificate given by RDW Roofing in respect of the Materials is given on behalf of the manufacturer of the Materials. All warranty claims in respect of the Materials must be submitted directly to the manufacturer except where RDW Roofing has agreed in writing to process any such warranty claims on behalf of the manufacturer. Any such warranty card or certificate will be provided to the Customer upon completion of the Work.
- (h) Where RDW Roofing attends the property following notification of an alleged defect or damage from the Customer and RDW Roofing does not deem a valid claim has been made, RDW Roofing reserves the right to charge any additional costs and expenses it has incurred in investigating the claim at RDW Roofing’s then current prices.

11 Indemnity

- (a) The Customer indemnifies and keeps indemnified RDW Roofing, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against RDW Roofing or, for which RDW Roofing is liable, in connection with any loss

arising from or incidental to the provision of Materials or Work or the subject matter of these terms of trade.

- (b) This includes, but is not limited to, any legal costs incurred by RDW Roofing in relation to meeting any claim or demand on a solicitor client basis, or any party or party legal costs for which RDW Roofing is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these terms of trade.

12 Force majeure

- (a) If circumstances beyond the control of RDW Roofing prevent or hinder its performance of the Work, RDW Roofing is free from any obligation to carry out the Work while those circumstances continue. RDW Roofing may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the control of RDW Roofing include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, pandemics, epidemics, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

13 Dispute resolution

- (a) At RDW Roofing's sole discretion, if there are any disputes or claims for unpaid Work, then the *Building and Construction Industry Security of Payment Act 2009* (Tas) applies.
- (b) Any other dispute which the parties are unable to resolve by negotiation may be referred by either party to the President or his or her nominee of the Master Builders Association of Tasmania whose determination as an expert shall be final and binding on the parties.
- (c) Despite the existence of a dispute, each party must continue to perform its obligations under these terms of trade.
- (d) No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

14 Miscellaneous

- (a) These terms of trade are governed by the laws of Tasmania and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Tasmania.
- (b) These terms of trade and any Quotes and written variations agreed to in writing by RDW Roofing represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (e) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; or sent by email to the email address of the addressee specified in the relevant Quote.