

# Terms and Conditions



## 1. Definitions

1.1 "Roof-On" shall mean Craig Davies, or any agents or employees thereof.

1.2 "Customer" shall mean any person with whom Roof-On contracts, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Roof-On.

1.3 "Default" shall mean any of the following in relation to the Customer:

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

1.3.2 The Customer intimating that it will not pay any sum by the due date.

1.3.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.

1.3.4 Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Roof-On remains unpaid.

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

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

1.3.7 Any material adverse change in the financial position of the Customer.

1.4 "Defect" means a fault or flaw in the workmanship or materials provided by us. In relation to workmanship this consists of:

1.4.1 workmanship that has not been carried out according to acceptable trade practice as defined by the New Zealand Metal Roof and Wall Cladding Code of Practice.

1.4.2 a significant, adverse and unauthorised departure from what was prescribed by the drawings and specifications;

1.4.3 in matters not specifically prescribed by the drawings and specifications, a material and unauthorised departure from manufacturer's tolerances (if manufacturer's tolerances are not available, then current tolerance schedules published by the Ministry of Business Innovation and Employment will apply, and if they are not available then current tolerance schedules published by New Zealand Standards will apply).

1.5 "Latent Condition" means any physical condition on or below or within the site, or the area surrounding the site, which differs materially from the physical conditions which could reasonably have been expected by us at the time our quotation was provided.

1.6 "Products" shall mean:

1.6.1 all Products supplied by Roof-On to the Customer; and

1.6.2 all of the Customer's present and after-acquired Products that Roof-On has performed work on or to or in which Products or materials supplied or financed by Roof-On have been attached or incorporated.

1.6.3 The above descriptions may overlap but each is independent of and does not limit the others.

1.7 "Products and Services" shall mean all products, goods, services and advice provided by Roof-On to the Customer and shall include without limitation the provision of design and consultation services and the supply of all roofing products, installation and all associated products and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Roof-On to the Customer.

1.8 "Price" shall mean the cost of the Products and Services as agreed between Roof-On and the Customer and includes all disbursements eg charges Roof-On pay to others on the Customer's behalf subject to clause 4 of this contract.

1.9 "Works" means the work that Roof-On is to carry out in accordance with its quotation or any agreed contract documents, including variations and any design work carried out by us.

## 2. Acceptance

2.1 Following the provision of a quote pursuant to clause 5, any instructions received by Roof-On from the Customer agreeing to the the supply of Products and Services by Roof-On shall constitute a binding contract and acceptance of the terms and conditions contained herein.

2.2 In providing instructions agreeing to the supply of Products and Services by Roof-On, the Customer shall be deemed to have accepted the quote (In the event that any quote has been revised the most recent revision shall be deemed in effect).

## 3. Warranties

3.1 Roof-On warrants that the Works we are responsible for will be carried out:

3.1.1 In a proper and competent manner;

3.1.2 With reasonable care and skill;

3.1.3 In accordance with any building consents;

3.1.4 Using materials that are fit for purpose;

3.1.5 Using materials that are new (unless agreed otherwise); and

3.1.6 In accordance with all applicable laws and legal requirements.

3.2 Roof-On further warrants that it shall use reasonable endeavours to meet any performance dates for the Works specified and agreed between it and the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Works.

## 4. Insurance

4.1 Roof-On will affect and maintain a public liability insurance policy for an amount of not less than one million dollars. The policy will be kept continuously in force until any work required to remedy defects has been completed.

4.2 If the Works are new construction or involve the alteration, addition or repair of an existing building, the Customer must affect and maintain a policy of insurance for contract works insurance or arrange for an extension to their existing home and contents policy.

4.3 Where requested in writing by the other party, a party liable to insure must provide satisfactory evidence as to the existence, maintenance and terms of any insurance policy.

## 5. Quote

5.1 Where a quote is given by Roof-On for Products and Services:

5.1.1 Unless otherwise agreed the quote shall be valid for thirty (30) days from the date of issue; and

5.1.2 The quote shall be exclusive of goods and services tax unless specifically stated to the contrary;

5.1.3 Roof-On reserves the right to alter its quote where that has been submitted based on plans which have been altered and/or changes have been made that would affect the measurements on which its quote has been calculated and/or has been based upon work in an area of a building that cannot be viewed until the work is undertaken and/or if a Latent Condition exists or circumstances exist beyond its control which will delay the efficient execution of the Works.

5.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

## 6. Variations

6.1 The Customer may order any variation to the Works that:

6.1.1 increases or decreases the scope of the Works;

6.1.2 omits any work; or

6.1.3 changes the nature, position, location, or quality of any work or materials.

6.2 Roof-On may claim a variation for any Latent Condition that becomes apparent after the Works have commenced and/or if in its opinion any work areas are not ready for work to commence. This may occur despite the Customer asking Roof-On to commence work resulting in increased costs (including without limitation, administration costs) as a result.

6.3 The Customer shall not, without the consent of Roof-On, remove work from the Works to have that work carried out by another contractor or the Customer.

6.4 Any variation to the Works initiated by the Customer must be in writing and:

6.4.1 state the scope of work the subject of the variation;

6.4.2 state the price of the variation or how the price of the variation is to be calculated; and;

6.4.3 be approved by both parties.

6.5 Wherever practicable, the value of any variation shall be agreed before the work is commenced, however any failure to do so will not invalidate the variation or the entitlement of Roof-On to be paid the reasonable value of the variation.

## 7. Collection and use of Information

7.1 The Customer authorises Roof-On to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under any agreed contract, or marketing any Products and Services provided by Roof-On to any other party.

7.2 The Customer authorises Roof-On to disclose any information obtained to any person for the purposes set out in clause 7.1.

7.3 Where the Customer is a natural person the authorities under clauses 7.1 and 7.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 8. Payment

8.1 Unless waived in writing by Roof-On, a deposit of 50% of the quoted price shall be required upon acceptance of any quote given by Roof-On pursuant to clause 5.

8.2 If agreed in writing between the Customer and Roof-On, progress payments may be required to be made during the course of this contract.

8.3 Roof-On shall invoice the Customer in respect of any required payment. Each invoice issued by Roof-On shall include details of a nominated bank account to which payment is to be made ('the nominated account').

8.4 The Customer shall pay each invoice submitted by Roof-On:

8.4.1 within seven days of the completion of Works ("the due date"). For the sake of clarity 'Works' in this instance includes both completed stages of works pursuant to clause 8.2 whereby progress payments are required, as well as any final completion of overall Works as that term is defined pursuant to clause 1.9; and

8.4.2 in full and cleared funds without deduction for any reason whatsoever to the nominated account.

## 9. Default

9.1 If the Customer does not make payment on the Due Date, the Customer shall be liable to pay:

9.1.1 default interest at the rate of 2% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and

9.1.2 Any expenses, disbursements and legal costs incurred by Roof-On 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.

9.2 Payment of all payment claims/invoices shall be without set-off or deduction of any kind.

9.3 If the Customer fails to pay any amount owing on the Due Date and any such default continues for five (5) calendar days then Roof-On shall be entitled to immediately suspend the Works without notice and such suspension shall be on the same basis as if it were a suspension under s24A(2) and (3) of the Construction Contracts Act 2002.

## 10. Risk and Delivery

10.1 The Products and Services remain at Roof-On risk until delivery to the Customer.

10.2 Delivery of Products and Services shall be deemed complete when Roof-On, or an agent including a manufacturer, gives possession of the Products and Services directly to the Customer or possession of the Products and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

10.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Roof-On making time of the essence.

10.4 Where Roof-On delivers Products and Services to the Customer by instalments and Roof-On fails to deliver or supply one or more instalments the Customer shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.

10.5 The Customer will ensure that Roof-On is provided with reasonable access to the delivery address together with adequate room for unloading. The Customer indemnifies Roof-On against all costs and liabilities Roof-On incurs with or arising out of the delivery or in unloading.

## 11. Agency

11.1 The Customer authorises Roof-On to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.

11.2 Where Roof-On enters into a contract of the type referred to in clause 11.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## 12. Title and Security (Personal Property Securities Act 1999)

12.1 Title in any Products and Services supplied by Swift Roofing passes to the Customer only when the Customer has made payment in full for all Products and Services provided by Roof-On and of all other sums due to Roof-On by the Customer on any account whatsoever. Until all sums due to Roof-On by the Customer have been paid in full, Roof-On has a security interest in all Products and Services.

12.2 If the Products and Services 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 and Services shall remain with Roof-On until the Customer has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall be deemed to be assigned to Roof-On as security for the full satisfaction by the Customer of the full amount owing between Roof-On and the Customer.

12.3 The Customer gives irrevocable authority to Roof-On to enter any premises occupied by the Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if Roof-On believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. Roof-On shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Roof-On may either resell any repossessed Products and Services 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 Services and credit the Customer's account with the invoice value thereof less such sum as Roof-On reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

12.4 Where Products and Services are retained by Roof-On pursuant to clause 12.3 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. The Customer further agrees it will have none of the rights under ss114(1Xa), 116, 117(1Xc), 119, 121, 125, 129, 131, 132, 133 and 134 of the PPSA. Where we have rights in addition to those in Parts 9 of the PPSA, the customer agrees that those rights shall continue to apply and in particular will not be limited by s109 of the PPSA.

12.5 If the Credit Repossession Act 1997 applies to any transaction between the Customer and Roof-On, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## 13. Security Interest for Service Providers



13.1 The Customer gives Roof-On a security interest in all of the Customer's present and after-acquired property that Roof-On has performed services on or to or in which Products or materials supplied or financed by Roof-On have been attached or incorporated.

## 14. Payment Allocation

14.1 Roof-On may in its discretion allocate any payment received from the Customer towards any invoice that Roof-On 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 Roof-On, payment shall be deemed to be allocated in such manner as preserves the maximum value of Roof-On's purchase money security interest in the Products and Services.

## 15. Defects Liability Period

15.1 The Customer must notify Roof-On of any Defect in writing as soon as reasonably possible after any Defect becomes apparent.

15.2 Roof-On must, at its own cost, rectify any part of the Works that is agreed by both parties to be faulty or defective and our responsibility, and remove and replace any materials not in accordance with our quotation or any contract documentation as directed in writing by the Customer for a period of 12 months from the date of completion of the Works.

15.3 The Customer shall give Roof-On all necessary and reasonable access to enable it to remedy any Defect and/or replace any materials during the 12-month period from the date of completion of the Works.

15.4 These defect provisions do not mitigate or absolve the Customer's responsibility for maintenance and correct usage of any Products and Services.

## 16. Limitation of Liability

16.1 Roof-On shall not be liable for any delay damages (whether those are for liquidated damages or otherwise) or for any claims for loss or profits (whether direct or indirect), or loss of business opportunity or anticipated savings or for any indirect or consequential loss whatsoever.

16.2 Roof-On shall have no liability for discrepancies between estimates that may have prepared for quantities based on plans or other information given by or on behalf of the Customer and

quantities actually required. The Customer warrants it has verified and, in any event, accepts responsibility for the accuracy of quantities ordered as being in accordance with its requirements.

16.3 Notwithstanding any other provision to the contrary, the total aggregate liability of Roof-On to the Customer arising out of or in connection with the Works whether in contract, any indemnity, tort (including negligence) by statute or otherwise at law or in equity is limited as follows:

16.3.1 to the value of price (excluding variations and the cost of materials) for the Works; or

16.3.2 for liability arising out of events or circumstances in respect of which insurance proceeds are available under an insurance policy required and warranted to be affected by Roof-On for the Works, the amount which is paid under that policy.

16.4 These clauses do not limit our liability to the extent that it:

16.4.1 cannot be limited at law; and

16.4.2 arises out of or in connection with any wilful default, fraud or criminal conduct.

## 17. Copyright and Intellectual Property

17.1 Roof-On, owns and has copyright in all work, software, systems, solutions, drawings, designs, specifications, electronic data and documents produced by Roof-On in connection with the Products and Services provided pursuant to this contract and the client may use the Products and Services only if paid for in full and for the purpose for which they were intended and supplied by Roof-On.

## 18. Personal Guarantee of Company Directors or Trustees

18.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Roof-On agreeing to supply Products and Services 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 Roof-On the payment of any and all monies now or hereafter owed by the Customer to Roof-On and indemnify Roof-On 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.

## 19. Claims and Return of Products

19.1 The Customer shall be deemed to have accepted the Products and Services provided unless the Customer notifies Swift Roofing otherwise within 5 days of delivery of the Products and Services to the Customer.

19.2 Products will only be accepted for return with prior consent of Roof-On. A 15% restocking fee applies. Returned Products must be accompanied by original invoice, in unused and undamaged condition and still in original packaging where applicable. The Customer is liable for all costs associated with the return. There will be no returns on customised orders.

19.3 In the event of damage in transit the Customer is required to send to Roof-On a written request for replacement together with the delivery docket and evidence that this was endorsed at the time of receipt of Products that the Products were damaged prior to unloading.

## 20. Cancellation

20.1 Once an order has been accepted by Roof-On, it can only be cancelled, varied or suspended (whether in whole or in part) upon the following terms and conditions:

20.1.1 No cancellation, variation or suspension will be effective or recognised unless, and only to the extent that Roof-On agrees in writing to such cancellation, variation or suspension;

20.1.2 The Customer agrees to accept delivery of all Products held by Roof-On in respect of such order and all Products in transit to or subsequently delivered to Roof-On for such order;

20.1.3 The Customer agrees to pay all costs, expenses and liabilities incurred by Roof-On in consequence of the cancellation, variation or suspension of the order.

## 21. Caveat

21.1 The Customer charges in favour of Roof-On as security for the Customer's obligations to Roof-On, all right, title and interest in any land held now by the Customer alone or jointly with anyone or acquired by the Customer at any time hereafter. If the Customer defaults in payment of any amount owed to Roof-On, the Customer specifically authorises Roof-On to lodge a caveat against any such property and appoints Swift Roofing to be the Customer's Attorney for this purpose.

## 22. Assignment

22.1 In consideration of the goods supplied to the Customer by Roof-On the Customer assigns to Roof-On absolutely all the Customer's right title and interest in any debt which is due to the Customer by any third party the Customer has on sold to Products supplied by Roof-On whether or not the amount of that debt due to the Customer by the third party comprises only a part of the amount of the debt for Products supplied by Roof-On to the Customer.

## 23. Miscellaneous

23.1 **Force Majeure.** Neither Roof-On nor the Customer shall be in breach of these terms nor liable for any delay in performing, or failure to perform, any of its obligations contained within these terms if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

23.2 Failure by Roof-On 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 Roof-On has under this contract.

23.3 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.

23.4 Unless otherwise agreed in writing, Roof-On is not responsible for obtaining a Code Compliance Certificate and is entitled to any final claim for payment irrespective of whether a Code of Compliance Certificate has or has not been issued.

23.5 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of Roof-On.

23.6 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.

23.7 If required by Roof-On the Customer will store Products and Services supplied by Roof-On in a way that enables them to be identified as having been supplied by Roof-On.

Contact: Craig Davies 022 501 4551