

Trusted to deliver

Terms and conditions of trade

1. Definitions

In these Terms and Conditions:

- 1.1 “Contract” means the contract between the Customer and WPC for the provision of Goods and/or Services by WPC of which these terms and conditions form part.
- 1.2 “Customer” means the Customer as set out in the Quote, any person acting on behalf of the Customer and any person purchasing the Goods and/or Services from WPC under the Contract.
- 1.3 “Default Interest Rate” means 2.5% per month.
- 1.4 “Goods” means the Goods supplied by WPC to the Customer under the Contract.
- 1.5 “Invoice” has the meaning given to it in clause 6.1.
- 1.6 “GST” means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985.
- 1.7 “Quote” means any quotation or estimate provided by or on behalf of WPC for the Services either verbally, electronically or in writing.
- 1.8 “Price” means the price payable for the Services as agreed between WPC and the Customer in accordance with clause 4.
- 1.9 “Secured Goods” has the meaning given to it in clause 14.1.
- 1.10 “Services” includes all services provided by WPC or its subcontractors in the course of performance of the Contract.
- 1.11 “WPC” means Waterproofing Concepts Limited, its assigns and/or successors.

2. Acceptance of Terms and Conditions

- 2.1 Contracting WPC to provide Goods and/or Services (including bookings made by telephone, email or on WPC’s website) or acceptance of a Quote provided by WPC constitutes acceptance by the Customer of these terms and conditions.
- 2.2 These terms and conditions are to be read in conjunction with any specific information provided regarding the Goods and/or Services. If there are any inconsistencies, then these terms and conditions prevail.
- 2.3 WPC reserves the right to amend these terms and conditions at any time by giving written notice to the Customer.

3. Quotes

- 3.1 Quotes are based on the information provided by the Customer. It is the Customer’s responsibility to ensure that accurate information is provided to WPC.
- 3.2 All Quotes are valid for the period stated at the time a Quote is given by WPC. If no period is stated, then all Quotes are valid for ninety (90) days from the date the Quote is produced by WPC (“Quote Period”). The Customer may accept the Quote at any time during the Quote Period.
- 3.3 At the end of the Quote Period, the offer contained in the Quote is no longer valid unless WPC agrees otherwise in writing.

4. Price

- 4.1 All Services are provided at the Price applicable at the date that all of the Services have been completed and WPC reserves the right to pass on to the Customer any change in Price due to:
- 4.1.1 a variation in the Contract for Services which will be charged as agreed in writing between the parties, and if there is no agreement, then at WPC's usual rate;
 - 4.1.2 additional Goods and/or Services being required due to circumstances which were not reasonably known to WPC at the date of the Quote; or
 - 4.1.3 any increase in the cost of labour or Goods which are beyond WPC's control (including any increase in the rates charged by subcontractors that could not reasonably have been foreseen by WPC).
- 4.2 If WPC is also providing any Goods in relation to the Services on behalf of the Customer, the Customer will indemnify WPC for payment of those Goods.
- 4.3 Any costs associated with freight, packaging and handling of the Goods are not included in the Price and will be charged in addition to the Price unless agreed otherwise between the parties.
- 4.4 All Prices are in New Zealand dollars and are exclusive of GST and other applicable duties and taxes. GST will be payable in addition to the Price in respect of all Goods and/or Services.
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5. Deposit

WPC may require the Customer to pay a portion of the Price as a deposit ("Deposit"). The amount of the Deposit, if required, will be specified with the Quote and payable on acceptance of the Quote. WPC will not be required to supply any Goods or Services until such time as the Deposit is paid by the Customer.

6. Payment

- 6.1 WPC may issue one or more invoice(s) ("Invoice") to the Customer for the Goods and/or Services at WPC's sole discretion. Payment must be made by the due date on the Invoice.
- 6.2 Payments must be made by cash, internet banking or by any other method as agreed between the parties.
- 6.3 Receipt by WPC of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised as the case may be.
- 6.4 If the Customer makes payment to WPC without reference to any specific Invoice, WPC has the right to allocate that payment towards any unpaid amount by the Customer.
- 6.5 If any Invoice is in dispute, any undisputed portion of that Invoice must be paid in accordance with this clause 6. The Customer may withhold payment of the disputed amount until such time as the dispute is resolved if the matter is brought to the attention of WPC immediately and the undisputed portion of the Invoice is paid.

7. Ownership

- 7.1 Ownership of the Goods remains with WPC until all monies the Customer owes to WPC (whether under this Contract or otherwise) have been paid in full.
- 7.2 Until all monies that the Customer owes to WPC have been paid, the Customer is a fiduciary for WPC and has a fiduciary duty to account to WPC for the Goods. If the Goods are sold, the Customer receives the proceeds of sale as a trustee for WPC and will place the proceeds of the sale in a separate bank account for the benefit of WPC. The Customer has no right to assert against WPC that it owns the Goods or the proceeds of sale of the Goods or any part of them until all monies the Customer owes to WPC (whether under this Contract or otherwise) have been paid in full.
- 7.3 If the Goods become mixed with or incorporated in any other goods, property or materials in such a way that they cease to exist as separate Goods, the original ownership of the new goods created by that mixing will vest immediately on creation in WPC as co-owner of the new goods with the owner of any other materials which become part of the new goods. The co-ownership will be calculated proportionally to the value of the various component materials. WPC's ownership of the new goods is otherwise on the same terms as the ownership of the Goods originally supplied.
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8. Risk and Insurance in Respect of Services

- 8.1 Unless agreed otherwise in writing with WPC, the Customer is responsible for ensuring that the Customer holds all relevant contract works insurance in relation to the Services before WPC provides any Services and until the date of completion of the Services. Such insurance must note WPC as an insured party.
- 8.2 The Customer must pay the premium on the contract works policy and any excess on a contract works insurance claim.
- 8.3 Without limiting the generality of the Customer's obligation under clause 8.1, the Customer's insurance must cover:
- 8.3.1 against loss or damage for not less than the Price or any other amount as confirmed by WPC;
 - 8.3.2 full replacement value against loss or damage to the Customer's existing structures (or existing adjacent structures) to which the Services are being provided and against loss or damage to the Customer's contents;
 - 8.3.3 against consequential loss arising from loss or damage to the Customer's existing structures to which the Services are being provided; and such insurance must include a waiver of the insurer's right to subrogation against the insured parties.
- 8.4 In the event of loss or damage to the Customer's structures to which the Services are being provided or have been provided, which is not caused by WPC or any party for whom WPC is responsible:
- 8.4.1 WPC is not required to carry out any restoration work at WPC's own expense.
 - 8.4.2 WPC will carry out the restoration work as a variation to the Contract.
 - 8.4.3 The restoration work will be paid for from the proceeds of the Customer's contract works insurance.
- 8.5 WPC must arrange public liability insurance for loss or damage to any property, or illness, injury or death to any person that arises from WPC or its subcontractors providing the Services.
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9. Risk and Insurance in Respect of Goods

- 9.1 The Customer is responsible for insuring the Goods against such risks as it thinks appropriate and WPC makes no representations and gives no warranties in respect of insurance over the Goods.
- 9.2 Risk in respect of the Goods will pass to the Customer when the Goods are delivered to the Customer's nominated address.

10. Licences and Approvals

The Customer is responsible for obtaining (at the Customer's expense), all licences and approvals, including any building consents required under any applicable law to carry out the Services, unless agreed otherwise in writing with WPC.

11. Default

- 11.1 If the Customer fails to make full payment of the Invoice by the due date in accordance with clause 6 then:
- 11.1.1 the Customer will be in default under this Contract;
 - 11.1.2 the Customer will pay interest on the default monies at the Default Interest Rate, payable on a daily basis from the due date;
 - 11.1.3 the Customer will be liable for all expenses (including legal costs on a solicitor to client basis) incurred by WPC as a result of the default; and
 - 11.1.4 WPC may withhold carrying out further Services and supplying further Goods.
- 11.2 The remedies available to WPC under clause 11.1 above are without prejudice to any other remedies available to it at law, equity or under these terms and conditions.
- 11.3 If the Customer is in default under these terms and conditions or if one of the events described in clause 23.1.2 occurs, the Customer will at WPC's request:
- 11.3.1 re-deliver any Goods to WPC or do anything reasonably necessary to allow WPC to retake possession of them;
 - 11.3.2 instruct any third parties who owe money in respect of the Goods to pay that money directly to WPC; and/or
 - 11.3.3 make any records available which may assist WPC to trace the proceeds of sale of the Goods.
- 11.4 If the Customer is in default under these terms and conditions or if one of the events described in clause 23.1.2 occurs, then WPC will be entitled without notice to repossess the Secured Goods. The Customer authorises WPC or its representatives, servants, agents or employees to enter the property where the Secured Goods are situated for the purpose of repossession. WPC will not be liable for any costs, expenses, damage, or loss of any kind suffered by the Customer as a result of repossession.
- 11.5 If WPC takes possession of the Secured Goods or the proceeds and after deduction of all money the Customer owes to WPC (including any interest due and including any expense occurred by WPC in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, WPC will pay that surplus to the Customer.
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12. Liability

- 12.1 WPC will not be liable for:
- 12.1.1 any loss, damages or costs resulting from any inaccurate information provided by the Customer;
 - 12.1.2 loss caused by any factor beyond WPC's control;
 - 12.1.3 any general information or external links on WPC's website; or
 - 12.1.4 consequential loss as a result of any of the above.
- 12.2 Without limiting clause 12.1 above, WPC's total liability to the Customer arising out of any claim for loss or damages, however arising, will not exceed the amount in the Quote and WPC will not be liable if notice of a claim is not provided by the Customer to WPC within seven (7) days of the Invoice being issued to the Customer.

13. Defects, Errors or Omissions

- 13.1 The Customer must inspect the Goods and Services on completion, and notify WPC within one (1) month of completion (time being of the essence) of any alleged defect, error or omission or failure to comply with the Quote. The Customer must allow WPC to inspect the alleged defect in the Goods and/or Services within a reasonable time of such notice.
- 13.2 If there is a defect in the Services, WPC's liability will be limited to rectifying or re-providing the Services at WPC's discretion.
- 13.3 If there is a defect in the Goods, WPC will use its best endeavours to procure the manufacturer of the Goods to remedy the defect at the manufacturer's cost.
- 13.4 Other than as set out in clauses 13.2 and 13.3, WPC will have no obligation to the Customer for any defects in the Goods and/or Services.
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14. Personal Property Securities Act 1999 ("PPSA")

- 14.1 The Customer acknowledges that these terms and conditions constitute a security agreement for the purposes of the PPSA. As security for all amounts owed by the Customer to WPC, the Customer grants WPC a security interest in:
- 14.1.1 any Goods which have been supplied by WPC but not paid for by the Customer and any new goods as described in clause 7.3 ("Secured Goods"); and/or
- 14.1.2 all of the Customer's present and after-acquired property, to secure any monies owed by the Customer to WPC under the Contract.
- 14.2 WPC reserves the right, at its discretion, to register a financing statement in respect of each category of Goods supplied to the Customer which comprises the Secured Goods and/or a general security over all of the Customer's present and after-acquired property. On the request of WPC, the Customer will promptly execute any documents and do anything else required by WPC to ensure that WPC's security interest created by these terms and conditions constitutes a perfected security interest over the Goods comprising the Secured Goods and/or over all of the Customer's present and after-acquired property.
- 14.3 The Customer must not agree to allow any person to file a financing statement over the Secured Goods without the prior consent of WPC and shall notify WPC immediately if it becomes aware of any person taking steps to file a financing statement against any of the Secured Goods.
- 14.4 The Customer:
- 14.4.1 Agrees that nothing in sections 114(1)(a), 116, 120(2), 133, and 134 of the PPSA will apply to these terms and conditions.
- 14.4.2 Waives the Customer's right to do any of the following:
- 14.4.2.1 object to WPC's proposal to retain any personal property under section 121 of the PPSA;
- 14.4.2.2 make a claim against WPC under section 125 of the PPSA if any damage is caused while Goods are removed by WPC in accordance with section 109 of the PPSA;
- 14.4.2.3 receive notice of the removal of an accession under section 129 of the PPSA;
- 14.4.2.4 apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA; and
- 14.4.2.5 receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.

15. Consumer Guarantees Act 1993

- 15.1 Where WPC is supplying Goods and/or Services to the Customer for business purposes within the meaning of the Consumer Guarantees Act 1993, pursuant to section 43, the provisions of that Act will not apply to this Contract.
- 15.2 Where WPC is supplying Goods and/or Services to the Customer other than for business purposes the provisions of the Consumer Guarantees Act 1993 will apply.
- 15.3 Where the Customer supplies the Goods to a person for business purposes, it will be a term of the Customer's contract with the buyer of the Goods that the Consumer Guarantees Act 1993 will not apply in respect of the Goods.
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16. Information and Privacy Act 1993

- 16.1 For the purpose of facilitating the efficient running of WPC's business, the Customer authorises WPC to:
- 16.1.1 collect all information it may require from any third parties and authorises those third parties to release that information to WPC;
 - 16.1.2 hold all information given by the Customer or any third parties to WPC; and
 - 16.1.3 use that information, including giving information to any other person to facilitate collection of debts from the Customer.
- 16.2 The information will be collected, held and used on the condition that:
- 16.2.1 it will be held securely by WPC;
 - 16.2.2 it will be accessible to any of WPC's employees and agents who need access to it for the efficient running of WPC's business;
 - 16.2.3 the Customer may request access to and correction of it at any time; and
 - 16.2.4 WPC will destroy or return the information to the Customer if requested by the Customer.
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17. Construction Contracts Act 2002 ("CCA")

- 17.1 The default provisions in the CCA apply where applicable, unless they have been altered under these terms and conditions or an alteration is agreed in writing between the parties.
- 17.2 For the avoidance of doubt, WPC has the right to suspend the Services in accordance with section 24A of the CCA. If WPC exercises such right to suspend the Services, WPC:
- 17.2.1 is not in breach of the Contract;
 - 17.2.2 is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer;
 - 17.2.3 is entitled to an extension of time to complete the Contract;
 - 17.2.4 maintains its rights under the Contract including the right to terminate the Contract; and
 - 17.2.5 may at any time lift the suspension at its discretion.

18. Waiver and Forbearance

All WPC's rights will remain in full force despite any delay in enforcement. WPC will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of WPC. Any waiver will apply only to the particular matter in respect of which it is given.

19. Personal Guarantee

- 19.1 If the Customer is a limited liability company, then, unless agreed otherwise between the parties, in consideration of WPC agreeing to supply the Customer with the Goods and/or Services, the director(s) of the Customer company agrees to personally guarantee all of the obligations owed by the Customer to WPC, including but not limited to the payment of all monies owed at any time by the Customer to WPC.
- 19.2 This guarantee will be continuing security for all future obligations the Customer owes to WPC until the guarantee is cancelled in writing. Any cancellation will only cancel the guarantor's liability in respect of future obligations of the Customer to WPC.
- 19.3 Where WPC requires the director(s) to provide such a guarantee the director(s) will sign the attached guarantee form before any Goods and Services are supplied.
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20. Assignment or Subcontracting

- 20.1 WPC is entitled at any time to assign or subcontract all or any part of its rights and obligations under the Contract without the Customer's consent.
- 20.2 The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or part of the debt which is assigned.
- 20.3 WPC will provide notice to the Customer of any assignment or subcontracting of its rights under the Contract where reasonably possible.
- 20.4 The Customer must not give any instructions directly to any of WPC's subcontractors without WPC's prior written consent.
- 20.5 The Customer is not entitled to assign or subcontract its rights under this Contract.
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21. Dispute Resolution

- 21.1 If either party considers that there is a dispute in respect of matters arising out of these terms and conditions, then that party shall immediately give notice to the other party setting out the details of the dispute. The parties shall then endeavour in good faith to resolve the dispute between themselves within fifteen (15) working days of notice of the dispute. Failing resolution, the parties will commence mediation within a further thirty (30) working days. If the parties cannot agree on a mediator, then one will be appointed for them by the President of the Canterbury/Westland Branch of the New Zealand Law Society.
- 21.2 If the dispute is not resolved by mediation as provided in clause 21.1, within twenty (20) working days of the date of appointment of the mediator, the mediation will terminate and either party may refer the dispute to adjudication under the Construction Contracts Act 2002.

22. Entire Contract

WPC and the Customer agree that these terms and conditions express the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document. There is no inconsistency with the terms of any order that may be lodged by the Customer. If there is any inconsistency then any such order will be of no effect. This Contract will not be subject to change or modification except with the prior written consent of both parties.

23. Termination

23.1 This Contract (including any unperformed obligations of WPC) may be terminated immediately by WPC providing written notice to the Customer confirming that no further Goods and Services will be supplied due to:

23.1.1 the Customer's default under the Contract; or

23.1.2 the Customer becoming insolvent or being subject to the appointment of a receiver, manager, liquidator, or statutory manager; or committing an act of bankruptcy or making a scheme of arrangement with its creditors; or being unlikely to be able to meet its obligations to WPC (in the opinion of WPC).

23.2 The obligations of the parties under this Contract will not merge with termination under this clause.

Approval

I/we agree to Waterproofing Concepts Limited Terms and Conditions of Trade

Quote number:

Company name:

Your name:

Signature:

Date: