

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Dixon Roofing" shall mean Dixon Roofing Contractors Limited, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing Products and Services from Dixon Roofing.
- 1.3 "Products" shall mean:
 - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Dixon Roofing to the Client; and
 - 1.3.2 all Products supplied by Dixon Roofing to the Client; and
 - 1.3.3 all inventory of the Client that is supplied by Dixon Roofing; and
 - 1.3.4 all Products supplied by Dixon Roofing and further identified in any invoice issued by Dixon Roofing to the Client, which invoices are redeemed to be incorporated in to and form part of this agreement; and
 - 1.3.5 all Products that are marked as having been supplied by Dixon Roofing or that are stored by the Client in a manner that enables them to be identified as having been supplied by Dixon Roofing; and
 - 1.3.6 all of the Client's present and after-acquired Products that Dixon Roofing has performed work on or to or in which goods or materials supplied or financed by Dixon Roofing 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 and Services" shall mean all products, goods, services and advice provided by Dixon Roofing to the Client and shall include without limitation the supply, installation, fixing, repairing and maintaining of all roof products and associated products and services (including scaffolding) and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Dixon Roofing to the Client.
- 1.5 "Price" shall mean the cost of the Products and Services as agreed between Dixon Roofing and the Client and includes all disbursements, e.g., charges Dixon Roofing pay to others on the Client's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Dixon Roofing from the Client for the supply of Products and Services and/or the Client signing any quote provided by Dixon Roofing shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises Dixon Roofing to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by Dixon Roofing to any other party.
- 3.2 The Client authorises Dixon Roofing to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 2020.
- 3.4 The Client has the right under the Privacy Act 2020 to obtain access to and to request correction of any personal information concerning the Client held by Dixon Roofing, and such personal information will be held by Dixon Roofing at its registered office.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Dixon Roofing 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 and Services that is beyond the control of Dixon Roofing between the date of the contract and delivery of the Products and Services.

5. PAYMENT

- 5.1 With respect to all Clients, payment for Products and Services, including invoiced payment claims for progress payments, shall be made in full on or before the 7th day following the date of the invoice ("the due date")
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 4% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Dixon Roofing in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable lawyer's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

- 5.6 Any termination or expiry of this contract will be without prejudice to Dixon Roofing's rights and remedies against the Client which have accrued up until the date of termination or expiration.
- 5.7 The Client will be deemed to have breached this contract if the Client becomes insolvent, commit an act of bankruptcy, have a receiver appointed over all or any part of their assets, make or are likely to make an arrangement with their creditors, have a liquidator (provisional or otherwise) appointed or are placed under statutory or official management.

6. QUOTATION

- 6.1 Where a quotation is given by Dixon Roofing for Products and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for sixty (60) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Dixon Roofing reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Client agrees to pay for the additional cost of such Products and Services.

7. AGENCY AND SUBCONTRACTING

- 7.1 The Client authorises Dixon Roofing to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.
- 7.2 Where Dixon Roofing enters in to a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

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

- 8.1 Title in any Products supplied by Dixon Roofing passes to the Client only when the Client has made payment in full for all Products provided by Dixon Roofing and of all other sums due to Dixon Roofing by the Client on any account whatsoever. Until all sums due to Dixon Roofing by the Client have been paid in full, Dixon Roofing has a security interest in all Products.
- 8.2 If the Products are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Products shall remain with Dixon Roofing until the Client 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 Dixon Roofing as security for the full satisfaction by the Client of the full amount owing between Dixon Roofing and Client.
- 8.3 The Client gives irrevocable authority to Dixon Roofing to enter any premises occupied by the Client or on which Products are situated at any reasonable time after default by the Client or before default if Dixon Roofing 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. Dixon Roofing shall not be liable for any costs, damages, expenses or losses incurred by the Client 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. Dixon Roofing may either resell any repossessed Products and credit the Client'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 Client's account with the invoice value thereof less such sum as Dixon Roofing reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Products are retained by Dixon Roofing pursuant to clause 8.3 the Client 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.
- 8.5 The following shall constitute defaults by the Client:
 - 8.5.1 Non payment of any sum by the due date.
 - 8.5.2 The Client intimates that it will not pay any sum by the due date.
 - 8.5.3 Any Products are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Products.
 - 8.5.4 Any Products in the possession of the Client are materially damaged while any sum due from the Client to Dixon Roofing remains unpaid.
 - 8.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distains against any of the Client's assets.
 - 8.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
 - 8.5.7 Any material adverse change in the financial position of the Client.
- 8.6 If the Credit Repossession Act applies to any transaction between the Client and Dixon Roofing, the Client has the rights provided in that Act despite anything contained in these terms and conditions of trade.

9. LIABILITY

- 9.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Dixon Roofing 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 Dixon Roofing, Dixon Roofing'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.
- 9.2 Except as otherwise provided by clause 9.1 Dixon Roofing shall not be liable for:
- 9.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products and Services by Dixon Roofing to the Client, including consequential loss whether suffered or incurred by the Client 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 and Services provided by Dixon Roofing to the Client; and
- 9.2.2 The Client shall indemnify Dixon Roofing 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 Dixon Roofing or otherwise, brought by any person in connection with any matter, act, omission, or error by Dixon Roofing its agents or employees in connection with the Products and Services.
- 9.2.3 If contrary to the disclaimer of liability contained in these terms and conditions of trade Dixon Roofing is deemed liable to the Client, following and arising from the supply of Products and Services by Dixon Roofing to the Client, then such liability is limited in its aggregate to \$500.

10. WARRANTY

- 10.1 Manufacturer's warranty applies where applicable.
- 10.2 Any written warranty that Dixon Roofing provides to the Client will also form part of these terms and conditions of trade.

11. SUPPORTING GUARANTEE

- 11.1 The Client must procure that a guarantee in the form attached to these terms and conditions is executed and returned to Dixon Roofing as soon as possible, on the terms set out in the guarantee (including as to seeking or waiving independent legal advice).
- 11.2 The Client acknowledges and agrees that, to the extent that any guarantee of any Secured Money or any other obligations owing by the Client to Dixon Roofing, or any Related Company is in existence prior to the date that these terms and conditions come into effect, the Client will procure that such guarantee will remain in full force and effect in respect of such Secured Money or other obligations.

12. FORCE MAJEURE

- 12.1 Dixon Roofing is not under any liability whatever in respect to any failure to delivery or delay in delivery due to any cause beyond Dixon Roofing' control of whatever nature. In no circumstances whatsoever shall the Dixon Roofing be liable for consequential loss whether suffered by the Client, and/or any third party.

13. CONSUMER GUARANTEES ACT

- 13.1 If Dixon Roofing are supplying Goods and Services to the Client 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.
- 13.2 If the Contract is subject to the Consumer Guarantees Act 1993, then the terms of the Contract will be subject the provisions of that Act to the extent those provisions are unable to be contracted out of.

14. MISCELLANEOUS

- 14.1 Failure by Dixon Roofing 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 Dixon Roofing has under this contract.
- 14.2 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.
- 14.3 Where applicable the Construction Contracts Act 2002 applies.
- 14.4 If the Client defaults in payment then the Client agrees that such default gives rise to a legal or equitable estate or interest in the Client's land which entitles Dixon Roofing to enter a caveat against the Client's land pursuant to the Land Transfer Act 2017 and its amendments or any legislation in substitution thereof.
- 14.5 This contract is governed by the laws of New Zealand and is subject to the jurisdiction of the courts of New Zealand.
- 14.6 Dixon Roofing may assign or sub-contract it's rights and obligations under these Conditions upon notice in writing to the Client. The Client may not assign their rights or obligations.
- 14.7 Any notice required to be given by Dixon Roofing shall be sufficiently given by posting an ordinary prepaid letter, by personal delivery, facsimile or by email to the last known addresses Dixon Roofing has on it's records. The Client is required to notify us of any change of address.
- 14.8 No variation or modification of the contract by the Client will be binding on Dixon Roofing unless agreed upon by Dixon Roofing in writing.

Dixon Roofing may vary the Contract at any time by notifying the Client in writing.

- 14.9 Dixon Roofing will not be liable to the Client for failure to provide the Products or Services to the Client by any specified dates.

