

COUNTRY 2 CITY METAL ROOFING PTY LTD - TERMS AND CONDITIONS

1. DEFINITIONS

“Company” means Country 2 City Metal Roofing Pty Ltd (ACN 604 474 240) and its successors and assigns or any person acting on behalf of and with the authority of the Company.

“Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one, Customer is a reference to each Customer jointly and severally.

“Materials” means materials and/or goods relating to the supply and install of roofing and associated works as supplied by the Company to the Customer at the Customer’s request from time to time.

“Order” means the Works as agreed between the Company and the Customer as confirmed by the Customer to be carried out and as specified in any invoice, Quote and/or other document.

“Price” means the Price payable for the Works as agreed between the Company and the Customer in accordance with Clause 4 below.

“Quote” means the document provided by the Company to the Customer stating the agreed Works to be carried out at the Price.

“Services” means services relating to the supply and install of roofing and associated works as supplied by the Company to the Customer at the Customer’s request from time to time.

“Site” means the address where the Works are to be carried out, as agreed between the Company and the Customer in writing.

“Works” means all works, Materials and/or Services supplied by the Company to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).

2. TERMS

2.1 An Order placed by the Customer is subject to these terms and conditions unless otherwise expressly agreed to in writing by the Company.

2.2 These terms and conditions may only be amended with the Company’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.

3. ACCEPTANCE

3.1 The Quote is taken to have been exclusively accepted and the Customer is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for the Works.

3.2 The Quote remains valid and open for acceptance for a period of 60 days from the date of the Quote unless a revised Quote is sent for the same Works.

4. TRADING TERMS

4.1 At the Company’s sole discretion, the Price shall be either:

4.1.1 as indicated on invoices provided by the Company to the Customer in respect of Works performed or Materials supplied; or

4.1.2 the Company’s quoted Price (subject to clause 4.2) which shall be binding upon the Company provided that the Customer accepts the Company’s quotation in writing within 60 days of the date of the Quote.

4.2 The Company reserves the right to change the Price:

4.2.1 if a variation to the Materials which are to be supplied is requested; or

4.2.2 if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

4.2.3 where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the Site, prerequisite work by any third party not being completed or hidden services, etc) which are only discovered on or after commencement of the Works; or

4.2.4 in the event of increases to the Company in the cost of labour or materials which are beyond the Company’s control.

4.3 At the Company’s sole discretion:

4.3.1 a deposit of not more than 50% may be required;

4.3.2 any deposit required must be paid in full on acceptance of any Quote;

- 4.3.3 The Company will not commence any Works or supply any Materials unless any required deposit is paid in full.
- 4.4 The Price will be payable by the Customer on the date/s determined by the Company, which may be:
- 4.4.1 on completion of the Works; or
- 4.4.2 by way of progress payments in accordance with the Company's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Works performed or Materials delivered to the Site but not yet installed; or
- 4.4.3 30 days following the end of the month in which a statement is sent to the Customer's address or address for notices; or
- 4.4.4 the date specified on any invoice or other form as being the date for payment; or
- 4.4.5 failing any notice to the contrary, the date which is 7 days following the date of any invoice given to the Customer by the Company.
- 4.5 Terms are strictly payment before delivery unless either:
- 4.5.1 Prior credit arrangements have been made strictly in accordance with any Company credit policy as they exist from time to time; or
- 4.5.2 The Company's enforcement of the requirement for payment before delivery would be contrary to legislation enacted in NSW and/or the ACT from time to time, in which event the amount payable by the Customer prior to the fixing of Materials shall be the maximum amount permitted under the relevant legislation.

5. CREDIT POLICY

- 5.1 The Company's Credit Policy is payment by the end of the month immediately following the month of delivery.
- 5.2 The Customer shall not in any circumstances withhold payment of the Price at the time it is to be paid under these conditions on the basis that the total supply and fixing of the Materials has not been completed as at the date required for payment and the Customer hereby waives any right in that regard in favour of the Company. Subject to any limitations imposed on the Company by under these terms and conditions.

6. PAYMENT

- 6.1 Payment may be made by cash, bank cheque and electronic/on-line banking or by any other method as agreed to between the Customer and the Company.
- 6.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

7. BREACH

- 7.1 Failure to comply with any of the agreed terms of payment shall constitute a breach of contract by the Customer and the Company may treat the whole contract as repudiated.
- 7.2 The Company may refuse to deliver further Materials and Services to the Customer until such time as the Customer has remedied its default under this clause and such refusal is without prejudice to any other rights the Company may have.

8. DEFAULT AND CONSEQUENCES OF DEFAULT

- 8.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 8.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on an indemnity basis, the Company's contract default fees and bank dishonour fees).
- 8.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Works to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 8.4 Without prejudice to the Company other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

- 8.4.1 any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
- 8.4.2 the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 8.4.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

9. DELIVERY

- 9.1 Where Materials are delivered to vacant or unattended sites and a receipt for delivery cannot be obtained by the Company's carrier, the Customer accepts responsibility for any shortages that may arise.
- 9.2 If the Company is only able to deliver part of the Materials ordered, the Customer agrees to accept the Materials delivered and to effect payment when due of that proportion of the Price which is applicable.
- 9.3 The Quote assumes that the stacking of the Materials can be effected within 8 metres of the building being constructed on the site. Should this not be possible, all costs incurred will be borne by the Customer.

10. TITLE

- 10.1 The Company and the Customer agree that title in the Materials supplied pursuant to these terms and conditions shall not pass until:
 - 10.1.1 the Customer has paid the Company all amounts owing to the Company; and
 - 10.1.2 the Customer has met all its other obligations to the Company.
- 10.2 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 10.1:
 - 10.2.1 that the Client is only a bailee of the Materials and must return the Materials to the Company on request within 7 days;
 - 10.2.2 the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - 10.2.3 the production of these terms and conditions by the Company shall be sufficient evidence of the Company's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Company to make further enquiries;
 - 10.2.4 the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand;
 - 10.2.5 the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs;
 - 10.2.6 the Customer irrevocably authorises the Company to enter any premises where the Company believes the Materials are kept and recover possession of the Materials at the cost and expense of the Customer;
 - 10.2.7 the Company may recover possession of any Materials in transit whether or not delivery has occurred;
 - 10.2.8 the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Company;
 - 10.2.9 the Company may commence proceedings to recover the price of the Materials sold and any Works performed notwithstanding that ownership of the Materials has not passed to the Customer.
- 10.3 The Customer acknowledges that all branded wooden pallets used for the delivery of Materials remains the property of the Company at all times.

11. SECURITY AND CHARGE

- 11.1 In consideration of the Company agreeing to supply the Materials and Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Company reserves its right to exercise any rights it has under this clause 11. Nothing in this clause places any obligation on the Company whatsoever. Nothing in this clause entitles the Customer to any setoff, however occurring, including but not limited to, the Company's failure or delay to exercise any of its rights or

register or perfect any interest in any security however occurring. The Company has the exclusive right and sole discretion to pursue the Customer, in any manner open to the Company at law, for the full amount of any monies owing despite any security it may hold and, in any order, or manner the Company deems fit.

11.3 The Customer irrevocably appoints the Company and any director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 Upon agreeing to these terms and conditions, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials that have previously been supplied and that will be supplied in the future by the Company to the Customer.

12.3 The Customer undertakes to:

12.3.1 promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to date in all respects) which the Company may reasonably require to:

12.3.1.1 register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

12.3.1.2 register any other document required to be registered by the PPSA; or

12.3.1.3 correct a defect in a statement referred to in clause 12.3;

12.3.2 indemnify, and upon demand reimburse, the Company for all expenses incurred by the Company exercising its rights under this clause 12, including but limited to, in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;

12.3.3 not register a financing change statement in respect of a security interest without the prior written consent of the Company;

12.3.4 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of the Company; and

12.3.5 immediately advise the Company of any material change in its business practices which would result in a change in the nature of proceeds derived from such sales.

12.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

12.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

12.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

12.7 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Customer shall unconditionally ratify any actions taken by the Company under the clause 12.

12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12.10 The Company reserves its right to exercise any rights the Company has under this clause 12. Nothing in this clause places any obligation on the Company whatsoever. Nothing in this clause entitles the Customer to any setoff, however occurring, including but not limited to, the Company's failure or delay to exercise any of its rights or register or perfect any interest in any security however occurring. The Company has the exclusive right and sole discretion to pursue the Customer, in any manner open to the Company at law, for the full amount of any monies owing despite any security it may hold and, in any order, or manner the Company deems fit.

13. CONSUMER SALES

13.1 All representations, warranties or conditions not expressly contained herein of any nature or kind whatsoever are hereby excluded to the extent that the Customer and the Company named are in law capable of agreeing to such exclusion.

13.2 In so far as any agreement between the Company and Customer provides for the supply by the Company of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption to a consumer within the meaning of that term as contained in section 4B of the *Competition and Consumer Act 2010* or for the supply of goods of that type to a seller within the meaning of that term as contained in Section 274 of the Australian Consumer Law, Schedule 2 of the *Competition and Consumer Act 2010* the liability of the Company for any breach of any conditions or warranty forming part of such an agreement is limited to:

13.2.1 In the case of goods, any one or more of the following at the option of the Company:

13.2.1.1 The replacement of the goods or supply of equivalent goods;

13.2.1.2 The repair of the goods;

13.2.1.3 The payment of the cost of replacing the goods or acquiring equivalent goods; and

13.2.1.4 The payment of the cost of having the goods repaired.

13.2.2 In the case of services supplied to the Customer, any one or more of the following at the option of the Company:

13.2.2.1 The supplying of the services again; and

13.2.2.2 The payment of the cost of having the services supplied again.

14. PRODUCT/SERVICE WARRANTY

14.1 The Company agrees to make good any defect in the fixing of the Materials directly resulting from faulty workmanship for a period of 1 year from the date of installation. Please refer to the Company's Installation Guarantee for full details.

14.2 The Company agrees to replace any Materials that are proved defective as per any manufacturers or suppliers warranty to which the Materials apply.

14.3 The Company and the Customer agree that where any defect in the Works or in a product used in the Works is identified, the Company shall have first right of refusal to repair said defect and before any third party is engaged to rectify said defects.

14.4 The Company accepts no responsibility for consequential loss or damage due to the supply of faulty Materials or workmanship.

14.5 The Company accepts no responsibility for any defect or damage which may be caused or partly caused by or arise as a result of:

14.5.1 the Customer failing to properly maintain or store any Materials;

14.5.2 the Customer using the Materials for any purpose other than that for which they were designed;

14.5.3 the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

14.5.4 interference with the Works by the Customer or any third party without the Company's prior approval;

14.5.5 the Customer failing to follow any instructions or guidelines provided by the Company; or

14.5.6 fair wear and tear, any accident, or force majeure.

15. FORCE MAJEURE

15.1 The Company shall not be liable for any failure to perform or delay in performance of the Works due to force majeure including but not limited to strikes, fire, floods, storms, explosions, riots, lock-outs, industrial action, injunctions, interruption of transport, accidents, inability to obtain supplies, war, terrorism, governmental action or any other circumstances beyond the Company's control.

16. QUANTITIES

16.1 It is the sole responsibility of the Customer to check the accuracy of the dimensions and details shown on the Quote. Any costs incurred due to a discrepancy between the Quote and the actual structure will be charged to the Customer at the same rate as used for calculation of the Quote.

17. SUPPLY

17.1 The Company agrees to supply Materials and Services to the Customer subject to the Company being satisfied as to the Customer's ability to pay within the agreed terms. If the Company is not so satisfied, then it may suspend performance and terminate any agreement.

17.2 The Company shall not be liable for any damage or loss caused to the Customer arising out of suspension and termination referred to in Clause 17.1.

17.3 The Customer shall immediately pay the Company all monies owing to it upon any suspension or termination of any agreement by the Company.

18. CUSTOMER REQUIREMENTS AND RESPONSIBILITIES

18.1 The Customer is required to and agrees to:

- 18.1.1 provide 7 days' notice to the Company for commencement of the Works on all domestic roofs to allow materials to be ordered and jobs to be scheduled;
- 18.1.2 ensure that all jobs sites are clean of debris and have clear access for delivery of materials prior to commencement of any Works;
- 18.1.3 ensure that the Company has always clear and free access to the work Site to enable it to undertake the Works; and
- 18.1.4 supply and install safety guard rails on all single-story roofs and builders' scaffold for top story roofs on 2 story developments or pay the cost for the Company to hire a contractor to supply and install. Such costs do not form part of the Price in the Quote unless expressly stated in the Quote.

18.2 The Customer is solely responsible for and agrees:

- 18.2.1 to Ensuring that the roof structure provided for the Works is constructed in accordance with all relevant Acts, Regulation, By-Laws and Ordinances;
- 18.2.2 to the supply, erection and maintenance of all necessary cranes, scaffolding, staging and other equipment which may be required by the Company and that this equipment conforms to all appropriate Legislation, Regulation, Ordinance or similar, governing such equipment and procedures;
- 18.2.3 to the supply and fixing of all necessary safety mesh, planking or close boarding where required by Legislation, Regulation, Ordinance or similar, or at the request of the Company;
- 18.2.4 to supply and fix all bracing, noggings, roof framing members, tilt battens, fascias, barge boards, guttering, flashing and any other fittings upon reasonable request by the Company;
- 18.2.5 that any structures to which the Materials are to be affixed are able to withstand and are suitable for the installation of the Materials. If the Company forms the opinion that the Site is not safe or unsuitable for the installation of the Materials to proceed then the Company shall be entitled to delay installation of the Materials until the Company is satisfied that it is safe for the installation to proceed. The Company will not be liable in any way to the Customer for any such delay; and
- 18.2.6 that any Materials that are to be affixed to existing structures will not sit 100 percent level or true if the existing structure is damaged, uneven or warped.

18.3 Where the Customer has supplied Materials for the Company to use to complete the Works, the Customer acknowledges that:

- 18.3.1 they accept responsibility for those Materials; and
- 18.3.2 the Materials are fit and proper for use to complete the Works.

19. RUBBISH

19.1 The Company accepts no responsibility for the removal of rubbish from the Site unless stated in the Quote.

20. LIABILITY

- 20.1 The Company shall not be liable for damages in respect of consequential damage or loss to person or property arising out of alleged defects in the Materials, Services and/or Works supplied.
- 20.2 The Company shall not be liable for any loss or damage to the Site unless due to the negligence of the Company and the Company receives notice of said loss or damage claim in writing within 7 days of the loss or damage occurring.

21. BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENTS LEGISLATION

- 21.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the following may apply:
 - 21.1.1 *Building and Construction Industry Security of Payments Act 1999* (NSW)
 - 21.1.2 *Building and Construction Industry (Security of Payment) Act 2009* (ACT)
- 21.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Acts contained at Clauses 21.1.1 and 21.1.2 above, except to the extent permitted by the Acts where applicable.

21.3 A Quote provided by the Company to a Customer is subject to the applicable provisions of the Acts contained at Clauses 21.1.1 and 21.1.2 above.

22. GENERAL

22.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.

22.2 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Australian Capital Territory and are subject to the jurisdiction of the courts in the Australian Capital Territory.

22.4 Subject to the provisions of these terms and conditions, the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

22.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

22.6 The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide any Works or Materials to the Customer.

22.7 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.