

1. Definitions

- 1.1 “Seller” shall mean Allroof Roofing Services its successors and assigns or any person acting on behalf of and with the authority of Allroof Roofing Services.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation or other form as provided by the Seller to the Client.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Works” shall mean all Works supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include the supply of Materials as defined below).
- 1.5 “Materials” shall mean all Materials required to complete the Works.
- 1.6 “Price” shall mean the price payable for the Works as agreed between the Seller and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by the Seller from the Client for the supply of Works and/or the Client’s acceptance of Works supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 3.4 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client’s failure to comply with this clause.
- 3.5 Works are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

- 4.1 At the Seller’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Client in respect of Works supplied; or
 - (b) the Seller’s current price at the date of delivery of the Works according to the Seller’s current Price list; or
 - (c) the Seller’s quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Client shall accept the Seller’s quotation in writing within fourteen (14) days.
- 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller’s quotation.
- 4.3 Where the Price has been based on plans/specifications supplied by the Client, the Client acknowledges that any additional Works required that were not shown on the original plans/specifications will be charged as a variation and will be in addition to the Price.
- 4.4 If the original price does not specify safety equipment (scaffolding, plant hire or machinery) and it is required, the Client acknowledges that any additional safety equipment required will be charged as a variation and will be in addition to the Price.
- 4.5 At the Seller’s sole discretion a deposit may be required.
- 4.6 Time for payment for the Works shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.7 The Seller may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.
- 4.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 4.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Works

- 5.1 Delivery of the Works shall take place when the Seller undertakes the Works at the Client’s nominated address.
- 5.2 The Client shall make all arrangements necessary to take delivery of the Works whenever they are tendered for delivery. The Client shall either provide (no less than forty-eight (48) hours prior to the commencement of the Works) the Seller with a key to any building(s) where access is required by the Seller, or meet the Seller at the worksite to give the Seller the required access. In the event that the Client is unable to provide the aforementioned access, the Seller shall not be liable for any delays in the commencement of the Works, and if the Client is not at the worksite at the arranged time then the Seller shall be entitled to charge a reasonable fee for the delay and/or redelivery of the Works.
- 5.3 The Client is solely responsible for providing the Seller with free, clear, and safe person/vehicle access to the worksite. The Client also warrants that the worksite shall comply with any relevant occupational health and safety laws, and/or any other relevant safety standards or legislation. The Client shall be solely responsible for keeping children and pets away from the worksite.

Allroof Roofing Services– Terms & Conditions of Trade

- 5.4 The Seller shall not be liable for any loss or damage caused in accessing the work site (including, without limitation, damage to vehicles, pathways, driveways and concreted or paved or grassed areas).
- 5.5 It is the intention of the Seller and agreed by the Client that it is the Client's responsibility to provide the Seller, while at the site, with adequate access to water and electricity facilities.
- 5.6 The Client and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 5.7 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 5.8 The Seller may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.9 The Client shall leave the bottom nose of the last row of tiles (which rest in the guttering) in the original state.
- 5.10 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.11 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Works (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.

6. Risk

- 6.1 If the Seller retains ownership of the Materials nonetheless, all risk for the Materials passes to the Client on delivery.
- 6.2 If any of the Materials are damaged, destroyed or stolen following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 Where the Works involve additions or alterations to an existing building or structure then:
 - (a) the Seller shall not be liable for any loss or damage suffered by the Client in relation to the Works where such loss or damage results from the state or condition of the Client's existing building or structure and the effect of such state or condition on the Works or the effect of the Works on the existing building or structure which could not reasonably have been foreseen by the Seller during the course of the Works; and
 - (b) where as a result of opening up any part of the existing building or structure to carry out the Works, any additional or altered work is required because of non-standard construction or any substandard timber or other materials or because of any material which is required to be replaced or removed to carry out the Works, then the cost of any additional or altered work shall be borne by the Client and treated as a variation and the contract Price adjusted accordingly; and
 - (c) when performing any Works (including, but not limited to, the partial or total removal of the roof) on the existing roof of an existing building or structure, the Seller shall not be liable for any loss or damage caused to any fittings (including, but not limited to, any cabling or light fittings) that were attached to the roof; and
 - (d) if during the provision of the Works any part of the roof is required to be covered with tarps, whilst the Seller shall make every effort to ensure the building or structure is protected from wind or water, the Seller shall not be liable for any damage caused to the building or structure due to water leaking through the tarps or for any other weather related damage caused due to the tarps failing to keep out the weather.

7. Title

- 7.1 The Seller and Client agree that ownership of the Materials shall not pass until:
 - (a) the Client has paid the Seller all amounts owing for the particular Materials; and
 - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 7.2 Receipt by the Seller 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 and until then the Seller's ownership or rights in respect of the Materials shall continue.
- 7.3 It is further agreed that:
 - (a) where practicable the Materials shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Materials shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Materials or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Materials shall cease; and
 - (c) the Seller shall have the right of stopping the Materials in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Materials to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Materials are situated and take possession of the Materials; and
 - (e) the Client is only a bailee of the Materials and until such time as the Seller has received payment in full for the Materials then the Client shall hold any proceeds from the sale or disposal of the Materials, up to and including the amount the Client owes to the Seller for the Materials, on trust for the Seller; and
 - (f) the Client shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
 - (g) the Client shall not charge the Materials in any way nor grant nor otherwise give any interest in the Materials while they remain the property of the Seller; and
 - (h) the Seller can issue proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials may not have passed to the Client; and
 - (i) until such time that ownership in the Materials passes to the Client, if the Materials are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. Defects

- 8.1 The Client shall inspect the Works on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Works within a reasonable time following delivery if the Client believes the Works are defective in any way. If the Client shall fail to comply with

these provisions the Works shall be presumed to be free from any defect or damage. For defective Works, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Works or repairing the Works except where the Client has acquired Works as a consumer within the meaning of the Trade Practices Act 1974 (CWth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Works, or repair of the Works, or replacement of the Works.

8.2 Materials will not be accepted for return other than in accordance with 8.1 above.

9. Certificate of Compliance

9.1 The Certificate of Compliance, issued at the completion of the Works and signed by a duly authorised certifier, shall act as the guarantee for the Works performed for the specified period.

10. Warranty

10.1 Subject to the conditions of warranty set out in clause 10.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within thirty-six (36) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.

10.2 The conditions applicable to the warranty given by clause 10.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Works; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident, storm damage, or act of God.
- (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

10.3 For Materials not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

10.4 The warranty for the Materials is transferable from the Client to the new owner of the house on which the Works were performed by the Seller. The warranty may only be transferred if the Seller is notified in writing within sixty (60) days of the change of ownership.

11. Intellectual Property

11.1 Where the Seller has designed, drawn or written Works for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion.

11.2 The Client warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

12. Default & Consequences of Default

12.1 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 one half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Seller.

12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

12.4 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Works to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.

12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

12.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Security And Charge

13.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

- 14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Works the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 A (5) day cooling off period applies in the event that the Client wishes to cancel this contract. All cancellations must be received in writing within 5 days of signed work order.

15. Privacy Act 1988

- 15.1 The Client and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Seller.
- 15.2 The Client and/or the Guarantor/s agree that the Seller may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 15.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:
 - (a) provision of Works; and/or
 - (b) marketing of Works by the Seller, its agents or distributors in relation to the Works; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Works; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
- 15.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

16. Building and Construction Industry Security of Payment Act 2002

- 16.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 16.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

17. General

- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 17.3 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Works.
- 17.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.
- 17.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.

Allroof Roofing Services– Terms & Conditions of Trade

- 17.7 The Client agrees that the Seller may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.