

# Terms and Conditions of Trade

## 1. INTRODUCTION

### 1.1 Application of these Terms and Conditions

The Customer agrees that prior to placing an order with the Contractor, the Customer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this agreement, "Contractor" is LM and JA Francis Pty Ltd A.C.N. 127512 038 ATF the LM and JA Francis Trust A.B.N. 58 992 937 042 trading as JONES ROOFING and its employees and subcontractors and the Customer is the applicant named on the account with the Contractor or where no account exists then on the Quote or Work Authorisation provided by the Contractor to the Customer. In this Agreement "Contract" means the accepted Quote or Work Authorisation; "Goods" means roofing products and associated roofing services; "Works" means the performance of roofing services to fulfill the Customer's instructions and "Site" means the place where the Contractor's Works will be carried out.

## 2. QUOTES & WORKS AUTHORISATIONS

### 2.1 Contractor Supply Quote

2.1.1 The Contractor may give the Customer a Quote specifying:

- the Works required to be done in order to fulfill the Customer's instructions; and
- an estimate of the Contractor's charge for the performance of such Works.

2.1.2 Quotes are valid for thirty (30) days only, unless an extension has been authorised in writing by the Contractor.

### 2.2 Contractor May Revise Quote

2.2.1 The Contractor may amend the Quote to take into account any increase in the cost of performing the Works which is beyond the Contractor's control, including but not limited to an increase in the price of materials such as steel.

2.2.2 The Contractor shall notify the Customer of such amendment as soon as practicable thereafter.

2.2.3 The Contractor will not be obliged to commence the Works until such time as the Customer agrees to the amendment of the Quote.

### 2.3 Acceptance by the Customer

Where the Contractor has given the Customer a Quote or Work Authorisation:

- the Contractor need not commence the Works until the Quote or Work Authorisation has been accepted by the Customer;
- the Customer shall accept the Quote or Work Authorisation by signing and returning a true copy of the Quote or Work Authorisation with a purchase order number (if applicable); and
- the Contractor will ensure that the Works start as soon as is reasonably possible.

The Customer acknowledges that time estimates are commercial estimates only.

### 2.4 Cancellation

The Customer shall reimburse the Contractor for any costs, expenses or losses incurred by the Contractor should the Customer cancel the Contract outside the cooling off period. The time for payment for such cancellation shall be seven (7) days from receipt of the Contractor's invoice.

### 2.5 Copyright

Copyright in all plans, sketches, design ideas and custom made solutions which appear in the Contractor's Quote or Work Authorisation shall be the property of the Contractor.

### 2.6 Ideas

The Customer must keep confidential and not use any ideas communicated by the Contractor to the Customer without the Contractor's prior consent.

## 3. VARIATIONS

3.1 The Customer shall indemnify the Contractor from any additional cost incurred by the Contractor, should;

- the Customer increase the scope of the Goods and Works to be provided by the Contractor; and/or
- the Contractor experience an unforeseen problem requiring the hire of special equipment to complete the Works.

3.2 Any variations must be authorised in writing by the Customer and signed off by both the Customer and the Contractor.

## 4. DELIVERY

4.1 Delivery of the Goods shall be made to the Customer's nominated address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Delivery of Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement.

4.2 The Customer shall indemnify the Supplier from any damage to the Customer's property when the Goods are delivered, including but not limited to damage to driveways and fencing.

## 5. RISK

The risk in the Goods shall pass to the Customer upon delivery/installation of the Goods to the Customer or its agent or to a third party nominated by the Customer.

## 6. WORKS IN PROGRESS

6.1 The Customer shall provide exclusive Site access for the Contractor to complete any necessary Works.

6.2 From time to time there may be delays to the Works due to circumstances outside the Contractor's control including, but not limited to, adverse weather conditions, material shortages and labour shortages. The Contractor shall notify the Customer in writing at the earliest opportunity if any such delays occur.

## 7. ARCHITECTURAL DESIGN

7.1 Should an inherent design fault cause leaking or other associated issues, the Customer shall indemnify and keep indemnified the Contractor from any costs, expenses or losses incurred should subsequent rectification work be required regardless of whether the Contractor raised the issue/s before the start of the Works or not.

## 8. PAYMENT

### 8.1 Time for Payment

The Customer shall pay the Contractor in the following manner:

- 10% of the Contract Price on acceptance of the quote
- 40% of the Contract Price upon delivery of Goods or material onto site
- Balance of payment upon completion of the job and the final invoice

### 8.2 Credit Card Payments

The Contractor will accept payment by Mastercard and Visa, subject to a surcharge of 2%.

### 8.3 Interest

The Contractor may charge interest at the rate of two per centum (2%) above the commercial lending rate of the Commonwealth Bank of Australia calculated on a daily basis on amounts not paid within the time specified in clause 2.4 and 8.1.

### 8.4 Deposit

8.4.1 The Contractor will require a deposit from the Customer unless the Contractor has agreed otherwise (in writing).

8.4.2 The Customer acknowledges the Contractor is under no obligation to start or undertake any Works as requested by the Customer, until the deposit is received by the Contractor in full and when all relevant details pertaining to Contract are provided.

8.4.3 In the event of default as to payment owing to the Contractor on the part of the Customer, the Contractor shall be entitled to forfeit the deposit and claim any Contractor's profit or margin contemplated by or allowed for in the Contract in addition to any remedy available to the Contractor at law or in equity.

### 8.5 Progress Payments

When agreed progress payments are not honoured by the Customer, the Contractor reserves the right to halt any further Works until such time as the outstanding payment is forthcoming.

### 8.6 Damages

The Customer must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay to the Contractor all sums outstanding as owed by the Customer to the Contractor and legal costs incurred in enforcing payment on a solicitor and own client basis

## 9. RETENTION OF TITLE

9.1 Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Contractor until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Contractor for the Goods, including all applicable GST and other taxes, levies duties. Where the Goods have been on sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Goods upon trust for the Contractor and to account to the Contractor for these proceeds.

### 9.2 Repossession

The Customer hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Contractor shall not be liable to the Customer or any person claiming through the Customer and the Contractor shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Contractor.

If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Contractor may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Contractor by the Customer.

9.3

- The Customer acknowledges that this agreement creates a security interest under the PPSA in the Goods and consents to the Contractor effecting a registration on the PPSA register in relation to any security interest contemplated by this agreement.
- The Customer must pay all costs, expenses and other charges incurred, expended or payable by the Contractor in relation to the filing of a financing statement or financing change statement in connection with this agreement.
- The Customer must not charge the Goods in any way or grant or otherwise give any interest in the Goods while it remains the property of the Contractor, nor allow any third party to acquire a security interest in the Goods.

9.4

If the Customer makes a payment to the Contractor at any time whether in connection with the supply of Goods or otherwise, the Contractor may apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

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9.5

- (a) The Customer agrees to the extent permitted under the PPSA, the Customer has no right:
- (i) to receive notice of removal of an accession under the PPSA;
  - (ii) under Chapter 4 of the PPSA; or
  - (iii) under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA.

9.6

- (a) If the Customer fails to comply with any obligation under this agreement then without limiting the remedies available to the Contractor:
- (i) upon request by the Contractor, the Customer must return the Goods;
  - (ii) the Customer authorises the Contractor and any person authorised by the Contractor to enter premises where the Goods may be;
  - (iii) located to take possession of the Goods; and
  - (iv) the Contractor may retain, sell or otherwise dispose of the Goods.

9.7 The Customer must unconditionally ratify any actions taken by the Contractor under this clause.

9.8 In this clause the following words have the respective meanings given to them in the PPSA: account, proceeds, register, registration, security interest and verification statement.

9.9 Each party agrees to keep the PPSA Information in strict confidence and not disclose that information, except in circumstances required by sections 275(7)(b) or (e) PPSA, provided that where sections 275(7)(b) or (e) require such disclosure, the party that is required to disclose the information gives all available notice to the other party to allow that party to legally challenge the required disclosure and takes all available steps (whether required by the other party or not) to maintain such PPSA Information in confidence.

9.10 Each party agrees not to authorise the disclosure of any PPSA Information to any third party pursuant to section 275(7)(c) PPSA or request information under section 275(7)(d) PPSA unless the other party to this agreement explicitly agrees.

## 10. WARRANTY

10.1 The Warranty period for the Goods may vary depending on the materials used. The appropriate warranty is available from the Contractor on request.

10.2 Any warranty as to the Goods on the part of the Customer shall be limited to the Warranty provided by the Manufacturer to the Customer on or before installation of the Goods.

10.3 The Customer shall indemnify the Contractor from any labour costs which are subject to warranty work.

10.4 The Contractor warrants that the Works will be carried out in accordance with all relevant laws and legal requirements in an appropriate and skilful way, in accordance with plans and specifications (where relevant) using materials that are good and suitable for the purpose for which they are intended to be used.

10.5 The Contractor reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

10.6 In respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or repairing the Workmanship/ Goods or in properly assessing the Customer's claim.

10.7 Subject to any provisions of any relevant legislation any alleged defects in the Works must be notified to the Contractor within 30 days of completion of the Works.

10.8 Until full payment has been made to the Contractor by the Customer no warranty will exist in relation to the Works or the Goods.

## 11. INSPECTION OF COMPLETED ROOF

11.1 The Customer shall only inspect the roof with guidance from a qualified roofer so as to:

- (a) ensure the safety of the Customer; and
- (b) eliminate any possible damage to a completed roof.

11.2 The Customer is advised that the warranty may be affected (as specified in clause 10.5) should the inspection procedure (as specified in clause 11.1) not be followed and the Customer subsequently damages the completed roof.

## 12. LIABILITY

### 12.1 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

### 12.2 Disclaimer of Liability

The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Goods and associated roofing services or payment of the cost of having the Goods and associated roofing services supplied again.

## 12.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Contractor's failure to complete or delay in completing the Works or to deliver the Goods.

## 12.4 Force Majeure

The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to complete the Works or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary material or any other matter beyond the Contractor's control.

## 12.5 Customer's Indemnity

The Contractor shall indemnify the Customer against: (a) any liability for loss, damage, injury or death arising out of the Works under the Contract except where such loss, damage, injury or death is caused by an act or omission of the Customer; and (b) any claim for injury or illness from the removal, transport and disposal of any existing asbestos roofing.

## 12.6 Possum Proofing

The Customer acknowledges that no warrant that the building will be possum proof and no liability will exist on behalf of the Contractor in the regard.

## 13. PRIVACY

13.1 The Customer hereby authorises the Contractor to collect, retain, record, use and disclose consumer and commercial information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Contractor, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.

13.2 The Customer also authorises the Contractor to make enquiries with respect to the Customer's consumer and commercial credit worthiness; to exchange information with other Credit Providers in respect to previous consumer and commercial defaults of the Customer and to notify other Credit Providers of a consumer and/or commercial default by the Customer.

## 14. SECURITY & CHARGE

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to the Contractor under the terms and conditions or otherwise and hereby authorises the Contractor or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time or to register this charge over assets of the Customer with the Australian Securities and Investments Commission.

## 15. GENERAL MATTERS

### 15.1 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### 15.2 Severability

Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### 15.3 Governing Law and Jurisdiction

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Customer and the Contractor will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.