

Terms and Conditions of Contract

Total Waterproofing (2005) Ltd.

1. DEFINITIONS

- 1.1 “us”, “we”, “our” shall mean Total Waterproofing (2005) Limited, or any agents or employees thereof.
- 1.2 “you”, “your” shall mean the client, any person acting on behalf of and with the authority of the client, or any person purchasing services from Total Waterproofing (2005) Limited.
- 1.3 “Services” shall mean all goods, chattels, or services, provided by us to you, including the provision of waterproofing buildings and structures and the supply and application of waterproofing membrane and all charges for time and attendance, work done, consultancy fees, insurance charges, or any fee or charge or disbursement cost associated with the supply of services by us to you.
- 1.4 “Price” shall mean the cost of the services as agreed between us and you subject to clause 5 of this contract.

2. RESPONSIBILITIES OF TOTAL WATERPROOFING (2005) LIMITED

- 2.1 We will use all reasonable endeavours to carry out and complete the performance of the services by the expected completion date but will not be liable for any loss or damage incurred by reason of any failure to perform by that date.
- 2.2 The obligation on us to perform the services by the expected completion date is subject to:
- 2.2.1 you complying with your responsibilities in terms of clause 13 herein;
- 2.2.2 Weather conditions not preventing the performance of the services on site.

3. ACCEPTANCE

- 3.1 Any instructions received by us from you for the supply of services shall constitute acceptance of the terms and conditions contained herein.
- 3.2 No agent or representative is authorised to make any representations, statements, conditions or agreements not expressed by us in writing, nor are we in any way bound by any such unauthorised statements.

4. USE OF INFORMATION

- 4.1 You authorise us to collect, retain and use any information about you and/or the property which is the subject of the services for the purposes of performing its services in terms of this contract.
- 4.2 You authorise us to disclose any information obtained to any person, including any local authority, Land Information NZ, engineer, or solicitor for the purposes set out in clause 4.1.
- 4.3 Where you are a natural person the authorities under clauses 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993.

5. PRICE

- 5.1 Where no price is stated in writing or agreed to orally the services shall be deemed to be sold at the current rate as such services are sold by us at the time of the contract and shall include time taken to travel, investigate and report, transports costs, and disbursements.

- 5.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the services that is beyond the control of us, including any increase in the costs of disbursements payable and arising from the supply of the services between the date of the contract and delivery of the services.

6. PAYMENT

- 6.1 Payment for services shall be made in full without deduction, set off or withholding whatsoever within seven days of the date of invoice or on or before the 20th day of the month following the date of the invoice, or on receipt of delivery of the report of work done, whichever we elect at our sole discretion and notify to you. (“the due date”).

- 6.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

- 6.3 Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in this contract shall be paid by you, including any reasonable solicitor’s fees or debt collection agency fees.

- 6.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

7. QUOTATION

- 7.1 Where a quotation are given by us for services:

- 7.1.1 The quotation shall be valid for one month from the date of issue; and

- 7.1.2 The quotation shall be plus Goods and Services Tax.

- 7.1.3 Unless we have measured the structure at your request for the purposes of the quotation the measurements and areas in the quotation are based upon the specifications supplied by the client and additional costs arising from any inaccuracy of such specification shall be payable by you;

- 7.1.4 It is based on the assumption that clear access to site will be provided and also within the building to enable work to proceed without hindrance. Any costs incurred by us due to delays or hindrance for which it has not been responsible are payable by you.

- 7.2 Where services are required in addition to the quotation you agree to pay for the additional cost of such services.

8. SECONDARY CONSULTANTS AND AGENCY

- 8.1 You authorise us to contract either as principal or agent for any services or part of the services forming the matter of this contract.

- 8.2 Where we enter into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and you agree to pay any amounts due under that contract.

9. LIABILITY

- 9.1 No claim for damage direct or indirect against us in respect of any services supplied shall in any case exceed the contract price of the services in respect of which such damage shall arise and to the extent permitted by law we excludes any liability for:

- 9.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by you or another person whether such loss or damage arises directly or indirectly from services provided by us to you and without limiting the generality of the foregoing of this clause we shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and

- 9.1.2 Any claim in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the services provided by us to you.

- 9.1.3 Timber or structural movement or the work performed by other trades people.

- 9.2 You shall indemnify us against all claims of any kind whatsoever however caused or arising (including without limitation all sums paid to compromise or settle claims, proceedings and actions out of court) and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of us or otherwise, brought by any person in connection with any matter, act, omission, or error by us our agents or employees in connection with the services.

10. GUARANTEES

- 10.1 The Consumer Guarantees Act 1993, THE Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such legally mandatory terms or conditions imposed on us, our liability shall only apply to the minimum extent required by that statute or provision and those legal obligations shall be restricted and modified so that only the legally essential obligations contained in those statutes apply to any services supplied by us. If such statutory provision nevertheless does apply, then, our liability under this contract shall be limited at its option to:

- 10.1.1 The supplying of the services again; or

- 10.1.2 The contract price under this contract.

11. WARRANTIES

- 11.1 No representation, condition, warranty. Or premise expressed or implied by law or otherwise applies to services except where expressly stated in this contract.

- 11.2 We provide a warranty against defects in workmanship for a period for two years from the date of supply of the services by us. This warranty applies only to the original client.

- 11.3 We will pass on to you the benefit of any warranty given by its suppliers or a third party such as the manufacturer.

12. RESPONSIBILITIES OF CLIENT

- 12.1 You shall:

- 12.1.1 Authorise us to enter its premises, or any other site or lands at any time for the provision of services; and

- 12.1.2 Obtain all necessary consents, approvals, licences and permits which are required from governmental, territorial, statutory or other competent authorities for the lawful implementation and completion of any services; and

- 12.1.3 Supply and be responsible for the supply and erection at your cost of such scaffolding or planking as may be necessary and to our requirements and in conformity with applicable standards and legal requirements.

- 12.1.4 Pay to us the contract price as set out in this contract and otherwise comply with its obligations under this contract.

13. DISPUTE RESOLUTION

- 13.1 Where there is a dispute arising under the terms of this contract then the party raising the dispute shall give written notice to the other party in writing informing it of the details of the dispute, the remedy sought and refers the dispute to arbitration under the Arbitration Act 1996.

- 13.2 The dispute shall be determined by one arbitrator to be agreed upon by the parties or, failing agreement shall be nominated by the President of the New Zealand Law Society.

- 13.3 The decision of the arbitrator shall be final and binding on both parties and the costs of any arbitration shall be borne as the arbitrator shall direct.

14. JURISDICTION

- 14.1 The law of New Zealand shall apply to this contract.

15. PREVAILING

- 15.1 Where the terms of this contract are at variance with the order or instruction from you, this contract shall prevail.

16. NON-WAIVER

- 16.1 Failure by us to enforce any of the terms and condition contained in this contract shall not be deemed to be a waiver of any of the rights or obligations we have under this contract.

17. GUARANTORS

- 17.1 Any personal guarantee made by any third party shall not exclude you in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and you shall be jointly and severally liable under the terms and conditions of this contract.

18. CANCELLATION AND SUSPENSION

- 18.1 We shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right without notice to suspend or cancel in whole or in part any contract for the supply of services to you if you breach any of your obligations under this contract or fails to pay any money owing after the due date or you commit an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.

- 18.2 Any cancellation or suspension under clause 19.1 of this contract shall not affect our claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or your obligations to this contract.

- 18.3 You may cancel this contract, or suspend the performance of any of the agreed services for a specific period of not more than one month, by notifying us in writing and such cancellation, or suspension shall be effective on receipt of notice.

- 18.4 Where there is any cancellation or suspension under clause 18.3 of this contract you shall pay us all amounts owing under this contract at the time (including a proportionate payment for services which are partially completed).

- 18.5 All sums unpaid by you shall become immediately due and payable in the event that the client fails to observe any of the terms of this contract or enters into a compromise or arrangement with its creditors or becomes bankrupt or has a receiver appointed or suffers presentation of a winding up petition, or passes a resolution for its winding up.

- 18.6 You acknowledge that we reserve the right to review the Terms and Conditions and contract price for the services following a suspension under clause 18.3.

19. FORCE MAJEURE

- 19.1 We shall not be liable for delay or failure to perform its obligations arising from any act of God or if the cause of the delay or failure is beyond its control.

20. ASSIGNMENT

- 20.1 You shall not assign all or any of its rights or obligations under this contract without the written consent of us.

- 20.2 We reserve the right to assign its rights under this contract without the written consent of you.

21. MISCELLANEOUS

- 21.1 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.