

Air Roofing Co Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Air Roofing" shall mean Air Roofing Co Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Air Roofing Co Pty Ltd.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Air Roofing to the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Works" shall mean Works supplied by Air Roofing to the Customer (and where the context so permits shall include any supply of Materials as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Air Roofing to the Customer.
- 1.5 "Materials" shall mean all Materials supplied by Air Roofing to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Works as defined above).
- 1.6 "Price" shall mean the price payable for the Works as agreed between Air Roofing and the Customer in accordance with clause 4 of this contract.
- 2. The Competition and Consumer Act 2010 ("CCA") 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 CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Clause 10 (Warranty) may NOT apply to the Customer where the Customer is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Customer is in any other way a consumer within the meaning of the CCA or the FTA of the relevant state or territories of Australia.
- 3. Acceptance**
- 3.1 Any instructions received by Air Roofing from the Customer for the supply of Works and/or the Customer's acceptance of Works supplied by Air Roofing shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Air Roofing.
- 3.4 The Customer shall give Air Roofing not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Air Roofing as a result of the Customer's failure to comply with this clause.
- 3.5 Works are supplied by Air Roofing only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer'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 Air Roofing's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Air Roofing to the Customer in respect of Works supplied; or
- (b) Air Roofing's current price at the date of delivery of the Works according to Air Roofing's current Price list; or
- (c) Air Roofing's quoted Price (subject to clause 4.2) which shall be binding upon Air Roofing provided that the Customer shall accept Air Roofing's quotation in writing within thirty (30) days.
- 4.2 Air Roofing reserves the right to change the Price in the event of a variation to Air Roofing's quotation.
- 4.3 At Air Roofing's sole discretion a deposit may be required.
- 4.4 At Air Roofing's sole discretion:
- (a) payment shall be due on completion of the Works; or
- (b) payment for approved Customers shall be made by instalments in accordance with Air Roofing's payment schedule.
- 4.5 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.
- 4.6 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 (2.0%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Air Roofing.
- 4.7 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 At Air Roofing's sole discretion delivery of the Works shall take place when the Customer takes possession of the Works at the Customer's nominated address (in the event that the Works are delivered by Air Roofing or Air Roofing's nominated carrier).
- 5.2 At Air Roofing's sole discretion the costs of delivery are included in the Price.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Works whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Works as arranged then Air Roofing shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Works to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 Air Roofing 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.
- 5.6 The failure of Air Roofing to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 Air Roofing shall not be liable for any loss or damage whatever due to failure by Air Roofing to deliver the Works (or any of them) promptly or at all, where due to circumstances beyond the control of Air Roofing.
- 6. Risk**
- 6.1 If Air Roofing retains ownership of the Materials nonetheless, all risk for the Materials passes to the Customer on delivery.
- 6.2 If any of the Works are damaged or destroyed following completion but prior to ownership passing to the Customer, Air Roofing is entitled to receive all insurance proceeds payable for the Works. The production of these terms and conditions by Air Roofing is sufficient evidence of Air Roofing's rights to receive the insurance proceeds without the need for any person dealing with Air Roofing to make further enquiries.
- 6.3 The Customer acknowledges that under no circumstances will Air Roofing handle the removal of asbestos product.
- 7. Title**
- 7.1 Air Roofing and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid Air Roofing all amounts owing for the particular Materials; and
- (b) the Customer has met all other obligations due by the Customer to Air Roofing in respect of all contracts between Air Roofing and the Customer.
- 7.2 Receipt by Air Roofing 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 Air Roofing'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 Air Roofing shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Materials shall pass from Air Roofing to the Customer Air Roofing may give notice in writing to the Customer to return the Materials or any of them to Air Roofing. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Materials shall cease; and
- (c) Air Roofing shall have the right of stopping the Materials in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Materials to Air Roofing then Air Roofing or Air Roofing's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Materials are situated and take possession of the Materials; and
- (e) the Customer is only a bailee of the Materials and until such time as Air Roofing has received payment in full for the Materials then the Customer shall hold any proceeds from the sale or disposal of the Materials, up to and including the amount the Customer owes to Air Roofing for the Materials, on trust for Air Roofing; and
- (f) the Customer shall not deal with the money of Air Roofing in any way which may be adverse to Air Roofing; and
- (g) the Customer shall not charge the Materials in any way nor grant nor otherwise give any interest in the Materials while they remain the property of Air Roofing; and
- (h) Air Roofing can issue proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials may not have passed to the Customer; and
- (i) until such time that ownership in the Materials passes to the Customer, if the Materials are converted into other products, the parties agree that Air Roofing will be the owner of the end products, unless they have become fixtures.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Customer and Air Roofing by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
- (i) all Materials previously supplied by Air Roofing to the Customer (if any);
- (ii) all Materials that will be supplied in the future by Air Roofing to the Customer.
- 8.3 The Customer undertakes to:
- (a) 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 Air Roofing may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Air Roofing for all expenses incurred 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;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Air Roofing;
- (d) 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 Air Roofing; and
- (e) immediately advise Air Roofing of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 8.4 Air Roofing 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.
- 8.5 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.
- 8.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by Air Roofing, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer shall unconditionally ratify any actions taken by Air Roofing under clauses 8.3 to 8.5.
- 9. Defects**
- 9.1 The Customer shall inspect the Works on delivery and shall within three (3) days of delivery (time being of the essence) notify Air Roofing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Air Roofing an opportunity to inspect the Works within a reasonable time following delivery if the Customer believes the Works are defective in any way. If the Customer shall fail to comply with these provisions the Works shall be presumed to be free from any defect or damage. For defective Works, which Air Roofing has agreed in writing that the Customer is entitled to reject, Air Roofing's liability is limited to either (at Air Roofing's discretion) replacing the Works or repairing the Works except where the Customer has acquired Works as a consumer within the meaning of The Competition and Consumer Act 2010 (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. Works will not be accepted for return other than in accordance with 9.1 above.
- 10. Warranty**
- 10.1 Subject to the conditions of warranty set out in clause 10.2 Air Roofing warrants that if any defect in any workmanship of Air Roofing becomes apparent and is reported to Air Roofing within two (2) years of the date of delivery (time being of the essence) then Air Roofing will either (at Air Roofing's sole discretion) replace or remedy the workmanship. 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 Customer to properly maintain any Works; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Air Roofing; or
- (iii) any use of any Works 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 or act of God.
- (b) the warranty shall cease and Air Roofing shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Air Roofing's consent.
- (c) in respect of all claims Air Roofing shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 10.3 For Works not manufactured by Air Roofing, the warranty shall be the current warranty provided by the manufacturer of the Works. Air Roofing 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 Works.
- 11. Default & Consequences of Default**
- 11.1 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 Air Roofing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Air Roofing.
- 11.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Air Roofing from and against all costs and disbursements incurred by Air Roofing in pursuing the debt including legal costs on a solicitor and own client basis and Air Roofing's collection agency costs.
- 11.4 Without prejudice to any other remedies Air Roofing may have, if at any time the Customer is in breach of any obligation (including those relating to payments), Air Roofing may suspend or terminate the supply of Works to the Customer and any of its other obligations under the terms and conditions. Air Roofing will not be liable to the Customer for any loss or damage the Customer suffers because Air Roofing has exercised its rights under this clause.
- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) 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.
- 11.6 Without prejudice to Air Roofing's other remedies at law Air Roofing shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Air Roofing shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Air Roofing becomes overdue, or in Air Roofing's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer 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 Customer or any asset of the Customer.
- 12. Security And Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which Air Roofing may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Air Roofing or Air Roofing's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Air Roofing (or Air Roofing'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 Air Roofing elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Air Roofing from and against all Air Roofing's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Air Roofing or Air Roofing's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
- 13. Cancellation**
- 13.1 Air Roofing 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 Customer. On giving such notice Air Roofing shall repay to the Customer any sums paid in respect of the Price. Air Roofing shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Works the Customer shall be liable for any loss incurred by Air Roofing (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14. Privacy Act 1988**
- 14.1 The Customer and/or the Guarantor(s) (herein referred to as the Customer) agree for Air Roofing to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Air Roofing.
- 14.2 The Customer agrees that Air Roofing may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Customer consents to Air Roofing being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Customer agrees that personal credit information provided may be used and retained by Air Roofing for the following purposes (and for other purposes as shall be agreed between the Customer and Air Roofing or required by law from time to time):
- (a) the provision of Works; and/or
- (b) the marketing of Works by Air Roofing, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Works.
- 14.5 Air Roofing may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that Air Roofing is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of Air Roofing, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customers credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by Air Roofing has been paid or otherwise discharged.
- 15. Construction Contracts Act 2004**
- 15.1 At Air Roofing's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Construction Contracts Act 2004 may apply.
- 15.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Acts where applicable.
- 16. General**
- 16.1 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.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 16.3 Air Roofing shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Air Roofing of these terms and conditions.
- 16.4 In the event of any breach of this contract by Air Roofing the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Works.
- 16.5 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 Air Roofing.
- 16.6 Air Roofing may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.7 The Customer agrees that Air Roofing 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 Air Roofing notifies the Customer of such change.
- 16.8 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.
- 16.9 The failure by Air Roofing to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Air Roofing's right to subsequently enforce that provision.