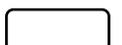




# **ALLCO WATERPROOFING SOLUTIONS LIMITED TERMS & CONDITIONS OF TRADE**



**1. Definitions**

- 1.1 “Allco” means Allco Waterproofing Solutions Limited, its successors and assigns or any person acting on behalf of and with the authority of Allco Waterproofing Solutions Limited.
- 1.2 “Customer” means the person/s buying the Goods 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.
- 1.3 “Goods” means all Goods or Services supplied by Allco to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between Allco and the Customer in accordance with clause 5 below.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, collects or otherwise accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Allco’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Allco.
- 2.3 All literature, samples, specifications, dimensions and weights submitted with any quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with products and services Allco supplies, and Allco reserves the right to supply products that have minor modifications in specifications as Allco sees fit.
- 2.4 The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the contract of sale of the products.

**3. Indent Goods**

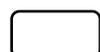
- 3.1 The Customer accepts and acknowledges that the supply of indent Goods is subject to availability, and that Allco is unable to guarantee availability, or in the absence of availability a delivery date of such Goods. The Customer further acknowledges that full payment of Allco’s invoice/statement must be made in accordance with clause 5.5, irrespective of whether the Goods have been delivered to/collected by the Customer, or if they remain at Allco’s premises.

**4. Change in Control**

- 4.1 The Customer shall give Allco not less than fourteen (14) days prior written notice of any proposed change of more than 50% of the beneficial ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Allco as a result of the Customer’s failure to comply with this clause.

**5. Price and Payment**

- 5.1 At Allco’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Allco to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to Allco’s current price list; or
  - (c) Allco’s estimated Price (subject to clause 5.2) which shall not be deemed binding upon Allco as the actual Price can only be confirmed once Allco has received delivery of the Goods from the manufacturer/supplier.
- 5.2 Allco reserves the right to change the Price if a variation to Allco’s estimate is requested. Any variation from the specifications of the Goods (including, but not limited to, any variation as a result of fluctuations (up and down), as a result of labour rates, raw materials prices, exchange rates, transport/freight, insurance and handling costs, taxes and levies, Customer usage and other factors beyond the control of Allco) will be charged for on the basis of Allco’s estimate and will be shown as variations on the invoice.
- 5.3 At Allco’s sole discretion a non-refundable deposit may be required. The deposit amount or percentage of the Price due will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 5.4 Allco may impose a credit limit on the Customer’s account and alter the credit limit without notice. Where the credit limit is exceeded, Allco may refuse to supply Goods to the Customer.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Allco, which may be:
  - (a) on delivery of the Goods;
  - (b) for certain approved Customers, due twenty (20) days following the end of the month in which an invoice and/or statement is posted to the Customer’s address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Allco.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Allco.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Allco an amount equal to any GST Allco must pay for any supply by Allco under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.8 A contract is created and the Customer is bound to pay the price when Allco accepts the Customer’s order in writing. Each accepted order shall constitute a separate contract.



- 5.9 A quotation does not create a binding contract until the Customer places an order that is then accepted by Allco.
- 5.10 All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing.
- 5.11 Allco reserves the right at any time to alter any price lists and any such alterations to any price list shall be effective from the date specified by Allco and shall apply to all orders accepted by Allco on or after that date.

**6. Customer Indemnity**

- 6.1 The Customer agrees to indemnify Allco from and against any loss, cost or liability suffered or incurred by Allco in respect of any Claim made against Allco to the extent caused or contributed to by the Customer (or any person the Customer is responsible for).

**7. Payment Validity**

- 7.1 The Customer acknowledges that Allco continues to supply the Customer on the condition that all payments received by Allco from the Customer are made at a time when the Customer is able to pay its debts as they become due from the Customer's own money.
- 7.2 The Customer further acknowledges that the Customer will not make any payments to Allco with a view to giving Allco a preference over any other creditors of the Customer.

**8. Delivery of Goods**

- 8.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Allco's address; or
  - (b) Allco (or Allco's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
  - (c) Allco places the Goods in a location for collection at the Customer's request
- 8.2 Allco acts as the Customer's agent for any transportation, storage or insurance of the Goods arranged by Allco for the Customer. Any liability or cost incurred by Allco in providing these services shall form part of the Invoiced Amount and shall be paid according to standard invoice terms.
- 8.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Allco shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 8.5 Any time or date given by Allco is an estimate only. The Customer must still accept delivery of the Goods even if late and Allco will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

**9. Risk**

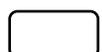
- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Allco is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Allco is sufficient evidence of Allco's rights to receive the insurance proceeds without the need for any person dealing with Allco to make further enquiries.
- 9.3 If the Customer requests Allco to deliver Goods outside Allco's premises for collection after normal warehouse hours or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 9.4 Any advice, recommendation, information, assistance or service provided by Allco in relation to Goods or Services supplied is given in good faith, is based on Allco's own knowledge and experience and shall be accepted without liability on the part of Allco and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.

**10. Accuracy of Customer's Plans and Measurements**

- 10.1 Allco shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Allco accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 10.2 In the event the Customer gives information relating to product type, measurements and quantities of the Goods required, it is the Customer's responsibility to verify the accuracy of the product type, measurements and quantities, before the Customer or Allco places an order based on these measurements and quantities. Allco accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

**11. Title**

- 11.1 Allco and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Allco all amounts owing to Allco; and
  - (b) the Customer has met all of its other obligations to Allco.
- 11.2 Receipt by Allco of any form of payment shall not be deemed to be payment until that form of payment has been honored, cleared or recognised.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:



- (a) the Customer is only a bailee of the Goods and must return the Goods to Allco on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Allco and must pay to Allco the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Allco and must pay or deliver the proceeds to Allco on demand.
- (d) the Customer should not convert or process the Goods 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 Allco and must sell, dispose of or return the resulting product to Allco as it so directs.
- (e) While legal or equitable ownership of the Goods remains with Allco, Allco retains the right to enter the premises or land where the Goods are held or stored and sever and remove them, as agent for the Customer, without being liable or responsible for any damage caused in doing so.
- (f) In the event that the Goods become fixtures incorporated into any realty Allco retains an equitable interest in the land.
- (g) Allco may recover possession of any Goods in transit whether or not delivery has occurred.
- (h) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Allco.
- (i) Allco may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## **12. Personal Property Securities Act 1999 ("PPSA")**

- 12.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by Allco to the Customer (if any) and all Goods that will be supplied in the future by Allco to the Customer.
- 12.2 The Customer undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Allco may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Allco for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Allco; and
  - (d) immediately advise Allco of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 Allco and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Allco, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer shall unconditionally ratify any actions taken by Allco under clauses 10.1 to 10.5.

## **13. Security and Charge**

- 13.1 In consideration of Allco agreeing to supply the Goods, 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).
- 13.2 The Customer indemnifies Allco from and against all Allco's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Allco's rights under this clause.
- 13.3 The Customer irrevocably appoints Allco and each director of Allco 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.

## **14. Customer's Disclaimer**

- 14.1 The Customer hereby disclaims any right to rescind or cancel any contract with Allco or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Allco and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

## **15. Defects**

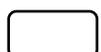
- 15.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify Allco of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Allco an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Allco has agreed in writing that the Customer is entitled to reject, Allco's liability is limited to either (at Allco's discretion) replacing the Goods or repairing the Goods.

## **16. Returns**

- 16.1 Returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 11.1; and
  - (b) Allco has agreed in writing to accept the return of the Goods; and



- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (d) Allco will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.2 Allco may (in its discretion) accept the return of new Goods that remain in re-saleable condition for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight costs incurred in the delivery and return of the Goods.
- 17. Warranty**
- 17.1 The only warranties agreed to by Allco relating to the Goods are those confirmed by Allco in writing. Such warranty are subject to the conditions as specified in Allco's Applicator Agreement and on warranty documents.
- 17.2 Except for the warranties referred to in clause 17.1, but subject to clause 17.4., to the maximum extent permitted by law Allco expressly excludes all other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability or fitness for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise.
- 17.3 Notwithstanding any other provision of these Terms, other than clause 17.1., under no circumstances, shall Allco be liable to the Customer or any other person (whether in contract, tort, including negligence, statute or otherwise) for any:
- (a) loss of profits;
  - (b) consequential loss or damage;
  - (c) indirect loss or damage; or
  - (d) special loss or damage of any kind.
- (e) To the maximum extent permitted by law, Allco' total liability (whether in contract, statute, tort, including negligence, or otherwise howsoever arising) for any Claim by the Customer, its agents, employees or subcontractors, or any other person, relating to or arising from the supply of Goods or any quotation or estimate given shall not exceed the price of the Goods to which the Claim relates.
- 17.4 If the Goods are acquired by the Customer for business purposes, the Consumer Guarantees Act 1993 does not apply to the sale of those Goods and the parties agree that sections 9, 12A, 13 and 14 of the Fair Trading Act 1986 do not apply. Nothing in these Terms is intended to contract out of the provisions of the Consumer Guarantees Act 1993 or the Fair Trading Act 1986, except to the extent permitted by those Acts.
- 18. Intellectual Property**
- 18.1 Where Allco has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Allco.
- 19. Default and Consequences of Default**
- 19.1 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 Allco's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes Allco any money the Customer shall indemnify Allco from and against all costs and disbursements incurred by Allco in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Allco's collection agency costs, and bank dishonor fees).
- 19.3 Without prejudice to any other remedies Allco may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Allco may suspend or terminate the supply of Goods to the Customer. Allco will not be liable to the Customer for any loss or damage the Customer suffers because Allco has exercised its rights under this clause.
- 19.4 Without prejudice to Allco's other remedies at law Allco shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Allco shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Allco becomes overdue, or in Allco's opinion the Customer will be unable to make a payment when it falls due;
  - (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.
- 20. Cancellation**
- 20.1 Allco may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Allco shall repay to the Customer any money paid by the Customer for the Goods. Allco shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Allco as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items, will not be accepted once production has commenced, or an order has been placed.



**21. Privacy Act**

- 21.1 Allco shall ensure that any personal information the Customer gives Allco stays secure and confidential.
- 21.2 Information provided by the Customer will be used by Allco for training, communication and marketing purposes.
- 21.3 Allco may release information to other professionals including, but not limited to its solicitors and accountants. Allco may also share Customer demographic and location data with contracted third parties to assist with communication, market research, targeting and analysis to help make Allco services better. This does not include sharing information that specifically identifies the Customer or employees of the Customer. The Customer shall have the right to request Allco for a copy of the information about the Customer retained by Allco and may request Allco to correct any incorrect information about the Customer held by Allco.

**22. Construction Contracts Act 2002**

- 22.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where Allco is a commercial provider this contract is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this contract shall be in no way limited by any contract that the Customer may have entered into with a third party in relation to the supply of Goods and/or Services to that third party or the payment by the third party to the Customer of any monies whether by progress payments or otherwise.

**23. General**

- 23.1 The failure by Allco to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Allco's right to subsequently enforce that provision. 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of New Zealand.
- 23.3 Allco 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, or any third party with whom the Customer has a relationship, arising out of a breach by Allco of these terms and conditions.
- 23.4 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 Allco nor to withhold payment of any invoice because part of that invoice is indispute unless agreed to in writing by Allco's management.
- 23.5 The Customer agrees that Allco may amend these terms and conditions at any time. If Allco makes a change to these terms and conditions, then that change will take effect from the date on which Allco notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a subsequent request for Allco to provide Goods to the Customer.
- 23.6 Force Majeure - 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.
- 23.7 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.

**24. Assignment, Novation and Subcontracting**

- 24.1 Allco may assign these Terms and all or any contracts created pursuant to them to any other person. Without limiting the foregoing, Allco may assign to any other person all or part of the debt owing by the Customer to Allco.
- 24.2 If Allco sells Allco's business (in whole or in part):
  - (a) Allco may novate these Terms and all or any contracts created pursuant to them to the purchaser of Allco's business upon the completion of such sale ("Novation"); and
  - (b) the Customer hereby agrees to any such Novation, without any requirement for notification to, or execution of any further documentation by, the Customer (however, if requested to do so by Allco, the Customer must execute a deed of novation).
- 24.3 The Customer agrees that Allco may subcontract the performance of the Services to any other person.

