

1. Definitions

- 1.1 "THCR" means T H Commercial Roofing Ltd, its successors and assigns or any person acting on behalf of and with the authority of T H Commercial Roofing Ltd.
- 1.2 "Client" means the person/s buying the Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Services" means all Goods or Services supplied by THCR to the Client at the Client'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 Services as agreed between THCR and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts provision of, the Services.
- 2.2 These terms and conditions may only be amended with THCR's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and THCR.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to THCR as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto, on the Client's behalf, and such authority to continue until all orders have been completed or the Client otherwise notifies THCR in writing that said person is no longer the Client's duly authorised representative.
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise THCR in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to THCR for all additional costs incurred by THCR (including THCR's profit margin) in providing any Services, or variation/s, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

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

5. Quotation

- 5.1 THCR shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, THCR accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 5.2 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or THCR places an order based on these measurements and quantities. THCR accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 5.3 Unless agreed in writing, the Client at its own cost must provide the building consent, temporary safety nets, scaffold and/or edge protection to THCR and Worksafe NZ requirements.
- 5.4 No allowance has been made to clear the site of any residual scrap. If THCR is required to remove the scrap, an extra charge will apply. Any useable materials, which are not reused in the course of THCR providing the Services and removed by THCR, will become THCR's property.

6. Price and Payment

- 6.1 At THCR's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by THCR to the Client; or
 - (b) THCR's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 THCR reserves the right to change the Price:
 - (a) if a variation to the Services originally scheduled (including any Goods, applicable plans or specifications) is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured/latent building defects than require remedial work, safety considerations, or prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
 - (c) in the event of increases to THCR in the cost of labour or Goods, which are beyond THCR's control.
- 6.3 At THCR's sole discretion, a non-refundable deposit may be required upon request.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by THCR, which may be:
 - (a) on completion of the Services; or
 - (b) by way of progress payments in accordance with THCR's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed;
 - (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 Client by THCR.
- 6.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and THCR.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to THCR an amount equal to any GST THCR must pay for any provision of Services by THCR under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.
- 6.7 Receipt by THCR 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 THCR's rights or ownership in relation to the Services, and this agreement, shall continue.

7. Provision of the Services

- 7.1 Subject to clause 7.2, it is THCR's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that THCR claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond THCR's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify THCR that the site is ready.
- 7.3 Provision of the Services to a third party nominated by the Client is deemed to be provision to the Client for the purposes of this agreement.
- 7.4 THCR may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by THCR for the provision of the Services is an estimate only and THCR will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that THCR is unable to provide the Services as agreed solely due to any action or inaction of the Client then THCR shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

8. Risk and Limitation of Liability

- 8.1 The Client warrants that the structure of the premises in or upon which the Goods are to be installed or erected is sound and will sustain the installation and Services incidental thereto. If for any reason (including the discovery of asbestos, or dangerous access to roof) that THCR, its employees or contractors reasonably form the opinion that the Client's premises is not safe for the Services to proceed then THCR shall be entitled to delay the Services (in accordance with the provisions of clause 7.2 above) until THCR is satisfied that it is safe for the installation to proceed. THCR may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Services undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price. THCR shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises be unable to accommodate the installation (including but not limited to insufficient or defective foundations, walls or other structures not erected by THCR).
- 8.2 The Client acknowledges and agrees that:
- (a) unless THCR is the principal contractor, THCR shall only be liable to the Client for the consequences of any negligent act, omission or statement of THCR, and then only to the extent and limitations referred to in sub-clause (b); and
 - (b) the loss and damage for which THCR is so liable, and the recompense to be made by THCR to a Client for such liability as specified in sub-clause (a), shall be limited to the maximum value of one thousand dollars (\$1000.00) in respect of any single act, omission or statement, unless otherwise specified in writing or by law; and
 - (c) the liability of THCR shall cover only direct loss or damage in respect of the Goods, or other matters arising directly from the scope of the Services agreed in THCR's quotation, and then only to the maximum limit specified as per sub-clause (b). All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Client is liable and responsible (as between the Client and the third party) whether by statute, contract tort or otherwise.

9. Client Acknowledgments

- 9.1 The Client acknowledges and accepts that:
- (a) Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. THCR will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (b) where THCR's quotation is for repairs to existing roofs, the quotation shall be based only on the replacement of damaged roofing and shall not include the replacement of roofing with slight imperfections, unless authorised by the Client prior to the commencement of the Services. If the Client requests the replacement of roofing that have slight imperfections but THCR does not deem to be defective, or affect the integrity of the roof, then this shall be a variation to the original quotation and clause 6.2 will apply; and
 - (c) THCR's express warranty is limited only to new or complete reroofs and shall be detailed accordingly in THCR's warranty documentation provided to the Client at the completion of the Services, all other Services will be subject to clause 15 (Defects); and
 - (d) any advice or recommendations by THCR are provided on the basis of THCR's industry knowledge of New Zealand standards and experience only; and
 - (e) should THCR's recommendations in relation to the suitability of the Goods not be adhered to (including, but not limited to, pitch, depth, size, insulation requirements and environmental location), the Client will bear all liability and responsibility for any problems that may arise. Furthermore, the Client agrees to indemnify THCR against any loss or damage that THCR may incur through the Client's failure to comply with this clause.

10. Access

- 10.1 The Client shall ensure that THCR has clear and free access to the site at all times to enable them to undertake the Services. THCR shall not be liable for any loss or damage to the site (including, without limitation, damage to walls, windows, painted surfaces, vehicles, plants, fences, pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of THCR.

11. Title

- 11.1 THCR and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid THCR all amounts owing to THCR; and
 - (b) the Client has met all of its other obligations to THCR.
- 11.2 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to THCR on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for THCR and must pay to THCR the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for THCR and must pay or deliver the proceeds to THCR on demand.

- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of THCR and must sell, dispose of or return the resulting product to THCR as it so directs.
- (e) the Client irrevocably authorises THCR to enter any premises where THCR believes the Goods are kept and recover possession of the Goods.
- (f) THCR may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client 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 THCR.
- (h) THCR may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 1999 (“PPSA”)

- 12.1 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to THCR for Services – previously provided (if any) and that will be provided in the future by THCR to the Client.
- 12.2 The Client 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 THCR may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, THCR for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of THCR; and
 - (d) immediately advise THCR 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 THCR and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client 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 THCR, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by THCR under clauses 12.1 to 12.5.

13. Security and Charge

- 13.1 In consideration of THCR agreeing to provide the Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies THCR from and against all THCR's costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising THCR's rights under this clause.
- 13.3 The Client irrevocably appoints THCR and each director of THCR as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Client's Disclaimer

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

15. Defects, Errors or Omissions

- 15.1 The Client shall inspect the Services on completion and shall within thirty (30) days of such time (being of the essence) notify THCR of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford THCR an opportunity to inspect/review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which THCR has agreed in writing that the Client is entitled to reject, THCR's liability is limited to either (at THCR's discretion) rectifying or re-providing the Services.

16. Warranties

- 16.1 For Goods not manufactured by THCR, the warranty shall be the current warranty provided by the manufacturer of the Goods. THCR 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 Goods.

17. Consumer Guarantees Act 1993

- 17.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Services by THCR to the Client.

18. Intellectual Property

- 18.1 Where THCR has designed, drawn, written plans or a schedule of Services, or created any Goods for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and Goods shall remain vested in THCR, and shall only be used by the Client at THCR's discretion.
- 18.2 The Client warrants that all designs, specifications or instructions given to THCR will not cause THCR to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify THCR against any action taken by a third party against THCR in respect of any such infringement.
- 18.3 The Client agrees that THCR may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Goods which THCR has created, and/or any digital media of Services provided by THCR, to the Client.

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 THCR's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes THCR any money the Client shall indemnify THCR from and against all costs and disbursements incurred by THCR in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, THCR's collection agency costs, and bank dishonour fees).
- 19.3 Without prejudice to any other remedies THCR may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions THCR may suspend or terminate the provision of Services to the Client. THCR will not be liable to the Client for any loss or damage the Client suffers because THCR has exercised its rights under this clause.
- 19.4 Without prejudice to THCR's other remedies at law THCR shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to THCR shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to THCR becomes overdue, or in THCR's opinion the Client will be unable to make a payment when it falls due;
 - (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.

20. Compliance with Laws

- 20.1 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Services, and that are not included in the project documents provided by THCR.
- 20.2 Both the Client and THCR agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.
- 20.3 It is the intention of THCR and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding to enable the Services to be undertaken (where in THCR's opinion it is deemed necessary). It is also agreed that all scaffolding erected will meet specified safety standards and that any persons erecting the scaffolding are suitably instructed in its safe and proper erection and where necessary hold a current Certificate of Competency and/or are fully licensed.

21. Cancellation

- 21.1 THCR may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice THCR shall repay to the Client any money paid by the Client for the Services. THCR shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Client cancels provision of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by THCR as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Act 1993

- 22.1 The Client authorises THCR or THCR's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by THCR from the Client directly or obtained by THCR from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 22.2 Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 The Client shall have the right to request THCR for a copy of the information about the Client retained by THCR and the right to request THCR to correct any incorrect information about the Client held by THCR.

23. Construction Contracts Act 2002

- 23.1 The Client hereby expressly acknowledges that:
- (a) THCR has the right to suspend the Services within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to THCR by a particular date; and
 - (iv) THCR has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if THCR suspends the Services, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if THCR exercises the right to suspend the Services, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to THCR under the Contractual Remedies Act 1979; or

- (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of THCR suspending the Services under this provision.

24. General

- 24.1 The failure by THCR to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect THCR'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.
- 24.2 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 Tauranga Court of New Zealand.
- 24.3 THCR shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by THCR of these terms and conditions (alternatively THCR's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 24.4 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 THCR nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.5 THCR may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.6 The Client agrees that THCR may amend these terms and conditions at any time. If THCR makes a change to these terms and conditions, then that change will take effect from the date on which THCR notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for THCR to provide Goods to the Client.
- 24.7 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.
- 24.8 The Client 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.