Metal Roofing & Building Supplies Pty Ltd - Terms of Trade ("Terms")

1 Application of Terms

1.1 These Terms govern our supply of Goods and Services to you, including supplies on a cash basis.

1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.

1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.

1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

2 Quotations

2.1 Each quotation that we issue:

(a) is an estimate only;

(b) is not an offer or obligation to supply any Goods or to perform any Services;

(c) is exclusive of GST;

(d) does not include the costs of delivering Goods;

(e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a contract for supply is formed; and

(f) contains a price on the basis that all Services are performed, and all Goods delivered, during our usual business hours,

unless the quotation states otherwise.

2.2 Quotations provided orally are subject to written confirmation.

2.3 A quotation may include additional terms or conditions, which will supplement these Terms.

2.4 Should you wish to have Services performed or Goods delivered outside our usual business hours please let us know as additional charges may apply.

3 Formation of contract

3.1 We are not obliged to supply any Goods or provide Services until after a contract for supply is formed.

3.2 A contract for supply is formed, and you have accepted these Terms, when:

(a) you have placed an Order with us; and

(b) we have received any deposit we have required from you in respect of the Order before progressing it; and

either we have:

(c) accepted your Order in writing; or

(d) supplied you with any Goods or performed any Services following receipt of your Order.

3.3 If you revoke an Order:

(a) prior to the formation of a contract for supply then:

(i) we will refund you any deposit you have paid in respect of that Order; and

(ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively

(b) after the formation of a contract for supply then unless we are in breach of the contract for supply:

(i) you must pay all our reasonable costs associated with fulfilment of your Order; and

(ii) we may apply any deposit you have paid towards those costs.

4 Price

4.1 The price payable for the Goods or Services will be:

(a) the price agreed in writing; or alternatively

(b) the price by our prevailing price list/rates as when you place your Order.

4.2 We may vary our price or rates by notice to you if you request:

(a) the Goods or Services be rendered outside our usual business hours;

(b) different Goods or Services to be supplied to the contract for supply; or

(c) that we delay provision of the Goods or Services for sixty (60) days or more.

4.3 Where we vary the price or rates payable for the Goods or Services pursuant to clause 4.2, we will notify you of the new price/rates. Thereafter you may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to you, otherwise you agree that the price/rates will apply to the contract.

5 Delivery and risk

5.1 We will use reasonable endeavours to deliver the Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Goods.

5.2 You acknowledge and agree that:

(a) unless the contract for supply expressly states otherwise, time in respect of delivery is not of the essence; and

(b) any timeframe or date for delivery is an estimate only and is not a contractual commitment.

5.3 Risk of loss, damage, or deterioration to the Goods passes to you, and delivery is deemed to occur, at the time:

(a) you or any third party on your behalf collect the Goods from us;

(b) we or our nominated carrier deliver the Goods to the delivery location stated in your Order (or to such other location as agreed in writing); or

(c) your nominated carrier takes possession of the Goods.

5.4 It is your responsibility to provide suitable, practical, and safe means of access and egress to the place agreed for delivery. If the site is deemed unsuitable or unsafe (at the delivery driver's sole discretion), then the delivery driver may:

(a) refuse to deliver the Goods and return the Goods to the point of despatch (in which case an additional delivery fee will apply to any subsequent delivery attempt); or

(b) deliver the Goods to the location nearest to the agreed place for delivery where delivery can be safely effected.

5.5 You agree to sign our delivery docket or consignment note or that of our nominated carrier as confirmation that you have received the Goods, and if appropriate, certify that you have received the Goods in apparent good order and condition in the quantity or volume you have ordered.

5.6 If you authorise us to deliver the Goods to an unattended location or to leave them outside the agreed place for delivery, we may deliver the Goods as requested at your risk.

5.7 If delivery or collection of the Goods is deferred:

(a) at your request; or

(b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the contract for supply);

in circumstances where:

(c) we are ready to deliver the Goods and a delivery date has not been agreed; or

(d) the Goods are due to be delivered or collected on an agreed delivery date,

then you will pay to us:

(e) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered or collected); and

(f) any costs associated with us or our nominated carrier attempting to re-deliver the Goods (where we or our nominated carrier has previously attempted to deliver the Goods).

5.8 You acknowledge and agree that we may deliver the Goods in one or more lots and may invoice you for pro rata progress in respect thereof.

6 Payment terms

6.1 Unless you have a Credit Facility with us which is not in default:

(a) deposits we have requested must be paid before we commence providing Goods and Services;

(b) you must pay for all Goods before they are despatched (in cash or cleared funds); and

(c) you must pay for all Services on a progressive hourly basis as performed.

6.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.

6.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.

6.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.

6.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

7 Claims

7.1 Clauses 7.2 to 7.4 only apply if the contract for supply is not a Consumer Contract and not a Small Business Contract.

7.2 You must, within seven (7) days of the date of delivery:

(a) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the contract for supply (including any Claim for shortfall, incorrect supply, or damage to the Goods); and

(b) at our request, provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.

7.3 You must notify us in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.

7.4 If you fail to notify us in accordance with clause 7.2 and 7.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.

8 Returns

8.1 We will accept the return of any Goods if:

(a) the Goods supplied do not conform with the contract for supply;

(b) the Goods are defective; or

(c) we are required by law to accept the return of the Goods.

8.2 At our discretion, we may accept the return of Goods if you change your mind if:

(a) you agree to:

(i) pay the lesser of a handling and administration charge of 20% of the purchase price of the returned Goods or $200; and

(ii) reimburse us for all costs we incur in connection with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective);

(b) the Goods are in substantially the same condition to the condition in which they were delivered; and

(c) the Goods were not specifically produced or procured at your request.

8.3 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

9 Retention of title

9.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:

(a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;

(b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;

(c) you undertake to not mix the Goods with similar goods;

(d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and

(e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.

9.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.

9.3 Where we exercise our right of entry pursuant to clause 9.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.

9.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.

9.5 For the removal of doubt, our interest under this clause 9 constitutes a purchase money security interest for the purposes of the PPS Act.

10 Security interest

10.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:

(a) register a financing change statement in respect of a security interest in our favour; or

(b) create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any third party.

10.2 You:

(a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and

(b) agree that, to the extent permitted by the PPS Act:

(i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and

(ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.

10.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.

10.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

11 Particular Purpose

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

12 Default

12.1 Clauses 12.2 to 12.4 apply if you fail to pay sums to us when they fall due.

12.2 If you fail to pay us sums within sixty (60) days from the date of due payment, we may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.

12.3 We may suspend or cease the supply of any further Goods or Services to you.

12.4 We may require pre-payment in full for any Goods or Services which have not yet been supplied.

13 Indemnity

13.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:

(a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and

(b) we will give you notice requesting payment for loss and damage occasioned in respect of those events

and requesting that you remedy any breach within a reasonable time; and

(c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.

13.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.

13.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

14 Limitation of liability

14.1 No party is liable to the other party for any Consequential Loss, including under clause 13, however caused arising out of or in connection with any contract for supply of which these Terms form part.

14.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods and Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.

14.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:

(a) (in the case of a supply of Goods):

(i) us repairing or replacing the Goods; or

(ii) us paying you the cost of having the Goods repaired or replaced.

(b) (in the case of a supply of Services):

(i) us supplying the Services again; or

(ii) us paying you the cost of having equivalent Services supplied.

15 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

(a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or

(b) has failed to pay sums due to the party within seven (7) days; or

(c) has indicated that it is, or may become, insolvent; or

(d) ceases to carry on business; or

(e) comprises an entity which is the subject of the appointment of receivers or managers; or

(f) comprises a natural person who:

(i) has committed an act of bankruptcy; or

(ii) has been made bankrupt;

(g) comprises a corporation which:

(i) enters into voluntary administration;

(ii) is subject to a deed of company arrangement; or

(iii) is subject to the appointment of liquidators or provisional liquidators.

16 Trustees

16.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:

(a) you enter into the contract for supply in both your capacity as trustee and in your personal capacity;

(b) you have the right to be reasonably indemnified out of trust assets;

(c) you have the power under the trust deed to enter into the contract for supply; and

(d) you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).

16.2 You must give us a true and complete copy of the trust deed upon request.

17 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

18 Assignment

A party may only assign its rights under the contract for supply with the written consent of the other party.

19 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

(a) any additional terms or conditions contained in our quotation applicable to the supply of Goods or Services;

(b) any terms governing your Credit Facility; and

(c) these Terms.

20 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

21 Governing law and jurisdiction

21.1 Our relationship is governed by and must be construed according to the law applying in the State of New South Wales.

21.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales with respect to any proceedings that may be brought at any time relating to our relationship.

22 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

22.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.

22.2 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.

22.3 **Consequential Loss** includes any:

(a) consequential loss;

(b) loss of anticipated or actual profits or revenue;

(c) loss of production or use;

(d) financial or holding costs;

(e) loss or failure to realise any anticipated savings;

(f) loss or denial of business or commercial opportunity;

(g) loss of or damage to goodwill, business reputation, future reputation, or publicity;

(h) loss or corruption of data;

(i) downtime costs or wasted overheads; or

(j) special, punitive, or exemplary damages.

22.4 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

22.5 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Goods and Services and associated charges.

22.6 **Customer**, **you** means the person or other entity who has placed an Order with us for the supply of Goods or Services (or the person on whose behalf an Order is placed).

22.7 **Goods** means all goods supplied by us, as described on our quotation, invoice, or any other form issued by us.

22.8 **Order** means a written or oral order placed by you requesting that we provide Goods or Services.

22.9 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.

22.10 **Services** means all services performed by us, as described on our quotation, invoice, or any other form issued by us.

22.11 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.

22.12 **Supplier**, **we**, **us** means Metal Roofing & Building Supplies Pty Ltd (ACN 146 513 797).

23 Interpretation

In these Terms, unless the context otherwise requires:

23.1 A time is a reference to the time zone of Sydney, Australia unless otherwise specified.

23.2 $, dollar, or AUD is a reference to the lawful currency of Australia.

23.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.

23.4 A right includes a benefit, remedy, authority, discretion, or power.

23.5 The singular includes the plural and vice versa, and a gender includes other genders.

23.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

23.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.

23.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".

23.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.