

General Terms and Conditions of Trade

1. Definitions and interpretation

1.1. In this Agreement:

Affinity Roofing means Affinity Roofing New England Pty Ltd ABN 43 680 679 074.

Agreement means the terms of trade contained in this document.

Australian Consumer Law has the meaning given to it in the *Competition and Consumer Act 2010* (Cth).

Building Contract means and other contract, agreement or understanding between Affinity Roofing and the Customer.

Customer means the party to whom a Quotation is provided by Affinity Roofing or by whom an Order is placed with Affinity Roofing for provision of Works and/or Goods.

Delivery Time means the time that Goods and/or Equipment are to be delivered to the site by Affinity Roofing.

Equipment means any kind of equipment.

Force Majeure Event means any event outside the reasonable control of Affinity Roofing including acts of God, war, riots, pandemic, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether of a like nature to those specified above.

Goods means products supplied by Affinity Roofing to the Customer, or at the Customer's request.

Invoice means the written invoice issued by Affinity Roofing to the Customer setting out the Price and any delivery or other charges.

Order means a written order to purchase Goods or the Works, and/or or to Hire Equipment, placed by the Customer with Affinity Roofing, including (but not limited) an Affinity Roofing Customer Acceptance form.

MBA Contract means a Master Builder Association or an equivalent industry body contract.

Non-trade Customer means a Customer who is not a Trade Customer.

Price means the price of the Goods and/or the Works determined under clause 2 of this Agreement.

Quotation means a written quotation issued by Affinity Roofing for the sale of Goods and/or provision of the Works and/or hire of Equipment to the Customer.

Site means the location where the Goods are to be delivered, and/or the Works are to be provided, as nominated by the Customer.

SWMS means a safe work method statement detailing the safety measures, risk assessments and procedures to be followed by Affinity Roofing and the Customer whilst the Goods are supplied and the Works provided.

Trade Customer means a Customer who Affinity Roofing describes as such.

Works means any services provided by Affinity Roofing to the Customer, or at the Customer's request.

Legal proceedings mean any form of legal process undertaken by or against Affinity Roofing Pty Ltd

2. Quotations and orders

- 2.1. Quotations are valid for the period specified in the Quotation and may be amended or withdrawn at any time by Affinity Roofing before an Order is accepted. An Order for the Works is not binding until accepted by Affinity
- 2.2. Roofing. Affinity Roofing may, in its absolute discretion, decline to accept an Order for Goods or the Works on any basis.
- 2.3. Acceptance of an Order by Affinity Roofing, and/or the placing of an Order by the Customer, constitutes a contract between Affinity Roofing and the Customer on these terms of trade.
- 2.4. Once Affinity Roofing accepts an Order, the Order cannot be cancelled without Affinity Roofing's prior written consent, which may require payment to Affinity Roofing of any loss or expense suffered by it because of the cancellation.

3. MBA Contract

- 3.1. If the Price exceeds \$20,000, Affinity Roofing will not provide the Goods and Works until the parties enter an MBA Contract in respect of the Goods and Works.
- 3.2. The MBA Contract will apply in addition to this Agreement and to the extent of any inconsistency between the two documents, the MBA Contract will prevail.

4. Price

- 4.1. At Affinity Roofing's discretion, the Price shall be either: as indicated on any invoice provided by Affinity Roofing to the Customer; or Affinity Roofing's quoted price which will be valid for the period stated in the Quotation or otherwise for a period of thirty (30) days.
- 4.2. Notwithstanding sub-clause 3.1, Affinity Roofing reserves the right to change the Price if: a variation to the Goods and/or the Works to be supplied is requested by the Customer; or, additional Goods and/or the Works are required due to unexpected, hidden or unidentifiable difficulties; or, there is an increase to Affinity Roofing in the cost of providing the Goods and/or the Works, which increase is beyond Affinity Roofing's control.
- 4.3. Prices do not include applicable taxes, statutory charges (such as GST), or delivery charges. However, any such taxes or charges will be specified in the Invoice and payable by the Customer.

5. Payment terms

Non-trade Customers

- 5.1. The Price of Goods and/or the Works is payable by the Customer as follows:
 - a. a 50% of the Price prior to delivery of the Goods;
 - b. a further 40% of the Price prior to the Works commencing; and
 - c. a further 10% of the Price within 7 days of the completion of the Works,or as otherwise agreed in writing.

Trade Customers

- 5.2. The Price of Goods and/or the Works is payable by the Customer on the date, or dates, determined by Affinity Roofing, which may be the date specified on any invoice or other notice; or, failing any notice to the contrary, within seven (7) days following the date of the Invoice and/or completion of the Works, whichever is the earliest.

All Customers

- 5.3. Any Invoice that is not paid by the due date will incur default interest which accrues daily as per current debtor interest rates, per calendar month.

- 5.4. If the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by Affinity Roofing.
- 5.5. Subject to clause 7, payment will constitute acceptance by the Customer of all Goods and/or the Works.
- 5.6. Where Affinity Roofing elects to amend the above payment terms, should the Customer not meet the agreed terms, the payment terms will revert to the above and be applied to any outstanding and/or pending invoices.
- 5.7. If the Customer does not meet the payment terms, Affinity Roofing reserves the right cease works from being undertaken until all monies owing have been received.

6. Delivery, access and SWMS

- 6.1. The Customer must provide full and clear access at the Site to deliver the Goods and provide the Works.
- 6.2. The Customer must approve of the Goods being supplied and the Works performed in accordance with the Quotation, before any Goods are supplied or any of the Works performed.

7. Defects, Warranties and limitation of liability

- 7.1. Affinity Roofing warrants that the Goods when delivered to the Customer will comply with any description for the Goods contained in the Quotation.
- 7.2. The warranty in this clause extends to cover the cost of repairing or replacing defective parts but, subject to the Australian Consumer Law, does not cover any travelling or labour costs.
- 7.3. Unless expressly provided in the Quotation or these terms of trade, Affinity Roofing gives no warranties and makes no representations regarding the Goods or the Works.
- 7.4. The Customer must notify Affinity Roofing in writing within seven (7) days of installation of any alleged defect, damage or failure of the Goods and/or services. If no such notice is given the Customer will be deemed to have accepted the Goods and the Works as having been supplied without defect or damage.
- 7.5. If a notice of defect or damage is given, the Customer must allow Affinity Roofing reasonable access to inspect the Goods and/or installation. If Affinity Roofing accepts that the Goods and/or installation are defective or damaged, Affinity Roofing at its discretion will replace the Goods or refund the Price for the Goods.
- 7.6. Affinity Roofing will not be liable to the Customer for any indirect or consequential damages, loss of profit, loss of bargain or liability to any third party whatsoever.
- 7.7. Affinity Roofing's liability to the Customer is limited to the Price for the Goods and/or the Works and/or Installation.
- 7.8. Affinity Roofing will not be liable for defective Goods and/or Installation where the defect results from any conduct attributable to the Customer.
- 7.9. Goods will not be accepted for return in any circumstances other than those specified in this clause or as required by law.
- 7.10. The person/s placing an Order warrants that he or she has authority to bind the Customer to this Agreement.
- 7.11. The Customer warrants that in placing an Order it has: satisfied itself as to the description and condition of the Goods and their fitness for the purpose for which the Customer will use them; and, not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Affinity Roofing or anyone on Affinity Roofing's behalf in respect of the Goods or the Works, other than those expressly contained in this Agreement, the Quotation or any other document that Affinity Roofing has provided to the Customer.

8. Ownership and Risk

- 8.1. Risk in the Goods passes to the Customer at the completion of installation.
- 8.2. The parties agree that ownership of, and title to, the Goods does not pass to the Customer until the Customer has paid the entire Invoice amount in respect of the Goods and the Works, and met all of its other obligations to Affinity Roofing in respect of all contracts it has with Affinity Roofing.

- 8.3. The contractor acknowledges the inherent risks associated with working at heights and agrees to adhere to all safety protocols and regulations set forth by local, state, and federal authorities.

9. Performance of the Works

- 9.1. Where the Works are to be performed on Site the Customer: warrants that all permits necessary for the installation of the Goods and the provision of the Works have been obtained and that the Site is safe; and, grants Affinity Roofing (and any persons authorised by it) a license to access the Site to perform the Works.
- 9.2. The Contractor shall provide and maintain adequate safety railings, scaffolding, and/or other appropriate safety measures/equipment to ensure the safety of workers and prevent falls from heights during the installation process.
- 9.3. Affinity Roofing will not be liable for (and the Customer releases and indemnifies Affinity Roofing from and against all claims in relation to) any damage or destruction to the Site or any property located on the Site, except damage or destruction resulting from or caused by Affinity Roofing.
- 9.4. Affinity Roofing will not be liable for (and the Customer releases and indemnifies Affinity Roofing from and against all claims in relation to) voiding of any warranty of solar systems, and other systems not otherwise outlined, required to be removed by industry professionals to facilitate roof replacement.

10. Default and Termination

- 10.1. If the Customer: is in default of any obligation; pursuant to the terms of trade; becomes unable to pay its debts as and when they fall due; is placed under external administration; or resolves to be wound up, then Affinity Roofing may, without prejudice to any other rights or remedies available to it under this Agreement or otherwise, by notice in writing to the Customer: suspend further supply and require payment in advance for future supply; recover possession of any Goods for which payment has not been made; terminate all or any Orders which have been accepted by Affinity Roofing; claim immediate payment of all moneys due by the Customer in respect of all Goods and/or the Works which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or, continue to enforce its rights and recover from the Customer such payments and any other amounts owing as and when they fall due.
- 10.2. If the Customer commits an event of default as specified in the previous subclause, all moneys owing to Affinity Roofing become immediately due and payable together with all interest, debt collection costs, legal costs and expenses associated with the exercise or enforcement of the debt on an indemnity basis.

11. Indemnity

- 11.1. The Customer agrees to indemnify and keep indemnified Affinity Roofing against all costs, claims, demands, expenses and liabilities of whatsoever nature (including claims of death, personal injury, damage to property and consequential loss (including loss of profit)), suffered or incurred by, or made against, Affinity Roofing as a result of a breach of this Agreement by the Customer, the Customer's use of the Goods and/or Installation of the Goods, or any other conduct of the Customer, except where those costs, claims, demands, expenses or liabilities are directly and solely attributable to the gross negligence or willful default of Affinity Roofing.

12. Force majeure

- 12.1. Affinity Roofing will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 12.2. If a Force Majeure Event arises, Affinity Roofing will notify the Customer in writing of it and its likely impact on Affinity Roofing's performance under this Agreement. If the Force Majeure Event affects the capacity of Affinity Roofing to complete its material obligations under this Agreement in a timely manner, Affinity Roofing may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

13. Building and Construction Industry Security of Payments Act

- 13.1. Nothing in this Agreement is intended to have the effect of contracting out of the *Building and Construction Industry Security of Payments Act 1999* of New South Wales.

14. Guarantee

- 14.1. The Customer signatory to this Agreement warrants that he/she is a director of the Customer, validly appointed and authorised to execute this Agreement on behalf of the Customer.
- 14.2. The signatory, in his/her personal capacity, unconditionally; guarantees to Affinity Roofing the due and punctual performance of the Customer's obligations under this Agreement; and promises to pay to Affinity Roofing on demand all moneys which the Customer defaults in paying under this Agreement including all moneys arising by way of costs, expenses, bank charges, losses or damages incurred by us arising from any default by the client under this agreement.

15. Legal Proceedings

- 15.1. Should any legal proceedings arise with Affinity Roofing listed as the Applicant or Respondent to resolve a dispute and case is ruled in Affinity Roofings' favour, all charges associated to the legal proceedings, including but not limited to application fees, solicitations fees, travel and loss of time, will be on charged to the customer.
- 15.2. Following any legal proceedings whereby the case has been ruled in Affinity Roofing's favour, no further claims can be made against Affinity Roofing by the Customer, or any related party.

16. General Provisions

- 16.1. To the extent of any inconsistency between this Agreement and any relevant Building Contract, this Agreement prevails.
- 16.2. If any provision of this Agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from this Agreement without affecting the validity or enforceability of the remaining provisions.
- 16.3. Any disputes arising from this Agreement shall firstly be attempted by the Customer and Affinity Roofing to be resolved through negotiation and mediation, with litigation being the last resort.
- 16.4. This Agreement (including the Quotation, Order and Invoice) constitutes the entire Agreement between the parties in respect of the Goods and/or the Works and supersedes all previous communications, representations, understandings or agreements.
- 16.5. This Agreement is governed by the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

AFFINITY ROOFING PTY LTD

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