

Watersedge Waterproofing Pty Ltd

Terms and Conditions

Unless otherwise agreed in writing by Watersedge Waterproofing Pty Ltd (“**WW**”), the Customer agrees that it will be bound by these terms and conditions (“**General Conditions**”) when the Customer accepts a quote issued by WW.

1. Definitions and interpretation

The following definitions shall be used for the purpose of interpreting WW General Conditions:

- a) **“Contract”** means the quote between WW and the Customer for the sale, purchase and installation of the Goods and Services incorporating these General Conditions.
- b) The Contract includes a description of the Goods and Services, applicable prices and delivery details, including Special Conditions as applicable, and:
 - i. General Conditions (this document);
 - ii. Specifications; and
 - iii. Drawings (if applicable).
- c) **“Customer”** means you the individual, entity or organisation that buys or agrees to buy the Goods and Services, as identified in the Contract.
- d) **“day”, “month” and “year”** means calendar day, calendar month and calendar year respectively.
- e) **“Delivery”** means the physical installation of the Goods by WW to the Customer’s nominated place, or an agent nominated by the Customer, in satisfaction of the WW’s obligations under the Contract, and “deliver” and “delivered” have corresponding meanings.
- f) **“Delivery Date”** means the date by which WW completes delivery of its waterproofing system using the Goods and Services at the nominated place.
- g) **“Goods”** means a range of waterproofing membranes, systems and other goods as determined by WW from time to time, combined with a system of installation for those goods, article, parts or any other property or services of any kind to be supplied, delivered or performed by WW under the terms specifically mentioned in the Contract.
- h) **“Services”** means the system of installation of waterproofing and such other goods that have been supplied by WW in accordance with Australian Standards, National Construction Code Building Code of Australia.
- i) **“Warranty Period”** means the period commencing on the date of the Customer’s acceptance of the final installation of the Goods to the nominated place, and extending for a period of ten (10) years thereafter unless otherwise stated in the Contract.

2. Contract

- 2.1 The Customer warrants that it is duly authorised to accept the quote and enter into these General Conditions. At the discretion of WW, all quotations will be valid for 30 days from the date it is issued and exclude any latent, hidden or unseen problems that may affect the quoted Goods and Services.
- 2.2 The Contract constitutes the entire agreement between the Customer and WW. WW shall not be bound by or be liable for any statement, representation, promise or understanding not set forth herein.
- 2.3 WW, at its sole discretion, may substitute for any Goods specified in the quote such other goods which WW may deem suitable. Any substitution of the Goods will not void the Warranty Period which shall remain the same, unless expressly stated otherwise.
- 2.4 The Contract supersedes, overrides and prevails over any quotation, invoice, communication from the Customer or other documentation.
- 2.5 The Contract can only be varied, modified or amended by the express written authorisation and agreement of WW.
- 2.6 If the Customer requires any additional work other than specified in the quote, which is deemed not to be a variation by WW, the Customer shall advise WW who shall provide the Customer with a new quote for that additional work.
- 2.7 Any request by the Customer for WW to perform a variation must be made in writing. At its sole discretion, WW may accept or decline to carry out such variation. WW's price for any variation and any effect on the Delivery Date shall be agreed by the Customer prior to WW carrying out any such variation. Failing such written agreement, WW shall not perform the requested variation.
- 2.8 A failure to agree to any variation requested by the Customer shall not invalidate the Contract.
- 2.9 Upon entering into a Contract with WW, it shall be deemed conclusive evidence of the Customer's acceptance these General Conditions.

3. Ordering, Price and Payment

- 3.2 All quotes for Goods and Services shall be deemed to be an offer by the Customer to purchase the Goods and Services pursuant to these General Conditions and are subject to acceptance by WW. WW may choose not to accept a quote from a Customer for any reason.
- 3.2 An initial deposit of [%] is due and payable by the Customer to WW upon entering the Contract.
- 3.3 At the end of each calendar month, or sooner at the sole discretion of WW, WW shall issue to the Customer monthly progress payments for the Goods and Services. Within fourteen (14) days the Customer agrees to full payment of all amounts due to WW without any set-off or deduction.
- 3.4 Any unpaid amounts owing to WW by the due date on the invoice shall attract interest at the rate of 10% per annum.

- 3.5 In addition to clause 3.4, WW will not provide certification or warranty documents until WW has received all monies due and owing from the Customer.
- 3.6 Should the Customer fail to pay any invoice from WW within fourteen (14) days from the date of issue, WW shall, at its own discretion, be entitled to suspend all waterproofing services and provide Goods and Services at the nominated place under the Contract.
- 3.7 If the Customer fails to pay any amount due under the Contract within a period of thirty (30) days from the date of an invoice, WW may report the payment default to a credit-reporting agency.
- 3.8 In the event where an outstanding invoice is referred to a collection agency, mercantile agent, private investigator and/or law firm (“**Collection Costs**”), you will be liable for all costs and disbursements which would be incurred as if the debt is collected in full, including but not limited to all legal demand costs, disbursements and the like. We will add the Collection Costs to the amount owed by the Customer.

4. Customer Obligations

- 4.1 The Customer shall provide WW with reasonable access at reasonable times to the Customer's nominated place for the purpose of providing the Goods and Services; and provide such information to WW as WW may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Goods and Services.
- 4.2 Every endeavour will be made to adhere to the quote Delivery Date but no liability can be accepted for failure to do so. The Delivery Date is to be accepted as an estimate only, not involving any contractual obligations and are subject to WW not being delayed by instructions or lack of instructions, or access to the nominated place by the Customer.
- 4.3 WW accepts no responsibility for any loss or damage incurred by the Customer on account of any delay arising from any causes whatsoever, whether beyond the control of WW or not. The Customer shall accept the Goods and Services when it is tendered and shall not be entitled to resile from the quote once accepted by the Customer on account of a delay in the Delivery Date.
- 4.4 Scaffolding costs are excluded unless specifically itemised in the quote. If scaffolding is required, it must be erected safely and properly in the nominated place with an engineer's sign-off and a copy provided to WW.
- 4.5 Any rubble, debris, and other matter needs to be removed from the nominated place by the Customer unless it has been expressly allowed for in the quote.

5. Site Requirements

- 5.1 Normal site facilities such as water, electricity, latrines and adequate storage area for the Goods, tools and equipment shall be provided and accessible unless specifically excluded and priced in the quote.
- 5.2 Access to the nominated place shall be free and unimpeded.

- 5.3 The Customer shall specifically point out any hidden services such as electrical cables, plumbing, wiring, security/alarm cables etc. if there is any possibility of damage to the said services for necessary precautions to be taken by the parties.
- 5.4 Whilst the utmost care will be taken to protect your property, WW recommends the Customer remove or cover any chattel from the nominated place.
- 5.5 Any vegetation that may be hindering any part of the Services must be cut back, trimmed or removed by the Customer to allow free access to any surface to be waterproofed prior to commencement of the Services at the nominated place, unless specifically included in the quote from WW.

6 Ownership and Responsibility

- 6.1 The Goods shall become the property of the Customer upon Delivery of the Services, as evidenced upon completion at the nominated place by WW.
- 6.2 Once the Customer has taken Delivery of the Goods and Services, the Customer shall be responsible for all risk, any loss or damage to the Goods and Services upon completion at the nominated place, or if there is more than one area/room, upon completion of that area/room at the nominated place.

7. Warranties and Exclusions

- 7.1 WW represents and warrants that it has the skills, experience and resources to successfully supply the Goods and Services in accordance with the Contract.
- 7.2 WW warrants the Goods and Services for the Warranty Period, or as otherwise stated. This Warranty Period is evidenced by a Certificate of Compliance from the Australian Institute of Waterproofing. The Warranty Period commences upon completion of the Services at the nominated place.
- 7.3 WW provides a standard 10 year warranty for all Goods and Services carried out as follows:
- (i) Application of Membranes - 10 years Workmanship;
 - (ii) Application of Epoxies - 10 years Workmanship; and
 - (iii) Other works - 6 years as required by Law.
- 7.4 WW warrants that the Goods:
- (i) are fit for their intended purposes, new and made to the specified quality, free from any liens, charges or encumbrances, and free from defects, for the duration of the Warranty Period;
 - (ii) conform to all applicable laws, regulations, statutory requirements, building codes and Australian Standards; and
 - (iii) used in the waterproofing process or repairs are regulated by the manufacturer's terms and conditions, which vary from product to product.

- 7.5 WW warrants that under proper use and maintenance no defects shall arise during the Warranty Period.
- 7.6 The above warranties are in addition to the specific warranty included in the Special Conditions, if any, and are provided by WW for the benefit of the Customer to whom WW's warranties are transferred to the Customer.
- 7.7 Subject to clauses 7.9 and 7.10, WW will rectify free of charge any failure of the Goods, but not any subsequent damage caused as a result of the failure, during the Warranty Period.
- 7.8 Subject to clauses 7.9 and 7.10, WW will rectify free of charge any failure of the Services, but not any subsequent damage caused as a result of the failure, during the Warranty Period.
- 7.9 Subject to clause 7.11, in order for the warranty to be valid during the Warranty Period at the nominated place, the Customer, its agents or successors in title:
- (i) shall immediately notify WW, or as soon as reasonably practicable, to attend and investigate the cause of the alleged failure of Goods or Services;
 - (ii) shall not engage any third party prior to WW first attending and investigating the cause of the alleged failure of the Goods or Services;
 - (iii) shall not engage any third party without WW written consent to investigate or remediate the cause of the alleged failure;
 - (iv) shall not allow any third party to alter WW's work, whether deliberate or otherwise;
 - (v) shall not allow any third party from damaging or coming into contact with WW's work from Delivery of the Goods and Services to completion;
 - (vi) shall not allow third parties from damaging or coming into contact with WW's work ready for final inspection or otherwise so that the membrane and/or other works are in the original state when left upon completion;
 - (vii) shall not allow exposure of a non UV membrane (such as Ultraseal, Dampshield, Adesco or any other coal tar free membrane for below ground use) to UV rays (sunlight), unless a UV stable acrylic membrane has been used and is designed to be exposed in accordance with the manufacturer's terms and subject to local environmental conditions, and the nominated place should be covered before the protective film starts to dissolve after Delivery of the Goods and Services;
 - (viii) shall not allow any third party, including other trades, to work within our nominated place during Delivery of the Goods and Services until completion

whereby any breach or failure to comply with clause 7.9 will render the warranty void and immediately lapse.

- 7.10 The following are excluded from a WW warranty:

- (i) The effects of an Act of God, lightening, floods or storms, hailstorms, windstorms, hurricane, tornado, cyclone, flying or falling objects, acts of war, terrorism, nuclear contamination, thermal shock, explosion, seismic event;

- (ii) Any existing damage or physical damage other than by WW;
- (iii) Any deliberate, intentional, criminal or negligent acts or illegal practises, mechanical damage, vehicular or pedestrian traffic, storage of material, or other misuse or abuse;
- (iv) Structural cracks, structural movement, vibration or displacement in the foundations, slabs or boarded areas in excess of the manufacturers terms and conditions, usually 3mm or greater;
- (v) Defects or irregularities in the design, materials or construction of the structure or substrate including but not limited to substrate failure, internal substrate moisture or internal pressure conditions;
- (vi) The Customer's failure to prevent or mitigate degradation or deterioration of, or leakage through, the substrate, overburden, or other elements of the structure or substrate that are in contact with or otherwise affect the performance of the waterproofing system;
- (vii) Inadequate drainage or the accumulation of moisture from condensation in or below the waterproofing;
- (viii) Deliberate or negligent acts including damage to the installation by a third party other than WW, for example, from other trades;
- (ix) Inadequate protection during and after Delivery, vandalism, misuse or abuse;
- (x) Physical damages to the waterproofing system during or after Delivery;
- (xi) Damage to the membrane by any third party other than WW;
- (xii) A deficient pre-existing condition or any sources of water entry other than the waterproofing;
- (xiii) Access to the nominated place is blocked and WW is not provided reasonable access to physically inspect, perform testing and obtain samples with respect to the alleged defect or failure;
- (xiv) Inaccessible leaks located behind building systems, components or equipment, soil or other overburden;
- (xv) Exposure to extreme temperatures or humidity from equipment, exhaust, steam, hot water, freezers, or cold storage;
- (xvi) If the Customer or a third party has attempted to repair or replace the alleged defect before WW is notified or without our written approval;
- (xvii) Rusted or cracked areas;
- (xviii) A change in building occupancy or use;
- (xix) Damage by plants, animals, insects or other living organisms;

(xx) Sealants such as silicone or polysulphide products which need to be re-applied on the area every 12 months; or

(xxi) Any unauthorised or improper alterations, repairs or maintenance not performed by WW;

whereby any of these exclusions within clause 7.10 shall render the warranty void and immediately lapse.

7.11 Any claim under warranty must be notified to WW within seven (7) days after the discovery of the alleged failure or defect via email to darren@watersedgewaterproofing.com.au and the Customer must provide details of the Goods and Services provided, date and site of installation, a description of the alleged defect or failure and photographic evidence. The Customer must also promptly provide WW with such further information as WW may reasonably request from time to time with respect to your claim. The Customer will bear any costs incurred in making a claim under WW warranty.

7.12 If the Customer makes a claim and WW determines that the alleged defect is covered by WW Warranty, WW will bear the cost of any inspections, testing and other work that WW carry out or have performed with respect to your claim. By making a claim, the Customer agrees that if WW reasonably determine that the alleged defect or failure is not covered by WW Warranty, the Customer must immediately upon demand reimburse WW for all of our reasonable documented expenses incurred with respect to your claim, including without limitation the cost of any inspections, testing and other work that WW carry out or have performed with respect to or as a result of your claim.

8. Defects and rectification

8.1 In addition to the obligations pursuant to clause 7, if any of the Goods and Services as supplied do not comply with the specifications or are otherwise not in accordance with the Contract at any time before Delivery or during the Warranty Period, the Customer shall give written notice to the WW of any failure or defect identified in the Goods and WW may at its election:

(i) without delay and at WW's cost, correct any failure or defect identified in the Goods by way of replacement, repair appropriate modification or other acceptable means. This includes reasonable labour expenses to repair or replace the Goods and Services (not to exceed the Customer's original cost of installation); or

(ii) require that the Customer be credited in respect of any amount that the Customer has paid for the Goods and Services.

8.2 Due to the nature of the Goods and Services it is often the case that additional materials (tiles, etc.) have been fixed over the top of the Goods. The Customer acknowledges that in most cases it will be necessary for WW to remove some or all of such covering materials in order to investigate and determine the specific cause of the alleged failure of the Goods and Services.

8.3 The Customer also acknowledges that upon removal of the covering materials it may be determined that the cause of the Goods and Services failing to perform as their intended purpose may be as a result of some damage to the integrity of the Goods and Services caused subsequent to the installation of the Goods and Services by a third party.

8.4 In the event that WW, while determining the cause of the failure of the Goods and Services, determines that the cause of the failure was due to an act of a third party or something other

than any problem with the quality and effectiveness of the Goods or the proper provision of the Services, WW will not be liable for repairs under the Warranty Period and the warranty will be void and immediately lapse.

- 8.5 In the circumstances described in clause 8.4, and subject to clause 7.12, the Customer may not be liable to WW for the cost of providing such services as are required to determine the actual cause of the failure, and WW will not be responsible for the replacement of any covering materials, loss or damage whilst revealing the cause of the failure.
- 8.6 Any Goods rectified under warranty shall be subject to a further Warranty Period, commencing from the date of completion of such rectification, unless otherwise directed in writing by WW.

9. Limitation of Liability

- 9.1 WW shall not be liable to the Customer for any loss or damage of any kind whatsoever and howsoever arising out of or in connection with the supply of Goods and Services, including (without limitation) whether for breach of contract, under indemnity, in tort (including for negligence) or any indirect or consequential loss on any other basis in law or equity for loss of: use, production, profit or anticipated savings, contract, revenue, goodwill; or economic loss of any kind, loss of data, loss of bargain, business interruption or for any financing costs or increase in operating costs, or for any special, punitive, incidental, consequential, direct, indirect or special loss arising out of or in connection with the Contract.
- 9.2 To the extent permitted by law, the liability of WW to the Customer for any damages howsoever arising shall be limited to the purchase consideration actually paid hereunder in respect of the Goods and Services which gave rise to the liability in question.
- 9.3 To the extent that WW may be liable for damages sustained by any third party, the Customer does hereby provide WW with a full indemnity in relation to such damages.
- 9.4 This clause 9 shall survive the Contract.

10. Lodgement of Caveat

- 10.1 The Customer agrees to grant WW a charge over the nominated place, any Land or Real Property registered in its name as security for payment of WW's invoice.
- 10.2 WW agrees not to register a caveat against the title to any property registered in the Customer's name unless and until:
- (i) any invoice rendered by WW to the Customer has not been paid for a period of 30 days; and
 - (ii) the time for the Customer to exercise its right to dispute the invoice has expired or has been finalised with or without an amicable resolution.

11. Cancellation, Refunds and Disputes

- 11.1 The Customer may cancel this Contract without any penalty, except as provided for in this clause, if done so at least fourteen (14) days before Delivery.

- 11.2 Should the Customer cancel the Contract in accordance with clause 11.1, the Customer will not be entitled to a refund of any deposit paid to WW.
- 11.3 Upon the commencement of Delivery of the Goods and Services by WW, the Customer cannot cancel this Contract.
- 11.4 Any dispute raised in relation to the issue of WW's invoice by the Customer must be made in writing within seven (7) days from the date of invoice via email to darren@watersedgewaterproofing.com.au.
- 11.5 Any other dispute raised in relation to this Contract by the Customer must be made in writing before the Delivery Date via email to darren@watersedgewaterproofing.com.au

12. Force majeure

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevents WW from providing any of the Services for more than ninety (90) days, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to WW in writing via email to darren@watersedgewaterproofing.com.au.

13. Assignment & Subcontracting

WW may assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the Customer's prior written consent.

14. Waiver

- 14.1 No failure or delay on the part of WW in exercising any of its rights under the Contract shall be construed as constituting a waiver of any such rights.
- 14.2 A waiver of any right under the Contract is only effective if given in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by WW in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.3 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15. Severance

- 15.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 15.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16. Australian Consumer Law

16.1 The benefits given by our Warranty are in addition to other rights and remedies of consumers under the *Competition and Consumer Act 2010 (Cth)* and other applicable Australian consumer laws in relation to the products to which our Warranty relates (to the extent that they cannot be excluded). If you are a consumer (as defined by the Australian Consumer Law as contained in the *Competition and Consumer Act 2010 (Cth)* (ACL)) our Goods and Services come with guarantees under the ACL that cannot be excluded.

16.2 Any liability we do have under the ACL in connection with our Goods and Services is limited to (at our election) one or more of the following:

- (i) replacement of the relevant product or the supply of equivalent product; or
- (ii) the payment of the cost of replacing the relevant product or of acquiring equivalent product.

16.3 Nothing in these General Conditions excludes any guarantees or liability arising under the ACL, or any other statute or law, if and to the extent that liability cannot be lawfully excluded.

17. Governing Law & Jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of the State of New South Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of New South Wales.

By signing, the Customer acknowledges that they have read, understood and agree to these General Conditions.

.....
[Name of Customer]

.....
[Address of nominated place]

Date: [Date Quote Accepted]