

LASER CEILINGS LIMITED T/A KIWI INSULATION TERMS & CONDITIONS OF TRADE

1. Parties And Definitions To This Agreement

- 1.1. "Kiwi Insulation" for the purposes of this agreement, shall mean Laser Ceilings Limited T/A Kiwi Insulation, any person or entity acting for or on behalf of Laser Ceilings Limited T/A Kiwi Insulation or with the permission or authority of Laser Ceilings Limited T/A Kiwi Insulation.
- 1.2. "Customer" shall mean the Customer, any person or entity acting for or on behalf of the Customer or with the permission or authority of the Customer as detailed on any quotation, estimate, work authority or notation as provided by Kiwi Insulation to the Customer.
- 1.3. "Guarantor" shall mean any person (or persons), or entity, who agrees to be held liable for the debts incurred by the Customer in the course of business between the Customer and Kiwi Insulation on a principal debtor basis.
- 1.4. "Services" shall mean all services supplied by Kiwi Insulation to the Customer and includes any recommendations or consultancy advice.
- 1.5. "Price" shall mean the price payable for the goods and or service as agreed between Kiwi Insulation and the Customer in accordance with clause 3 of this contract.

2. Goods And Services

- 2.1. The Goods and Services provided shall be described on our invoices, quotation or any other such form as provided by Kiwi Insulation (Laser Ceilings Limited T/A Kiwi Insulation) to the Customer.

3. Price And Payment

- 3.1. The price shall be At Kiwi Insulation's sole discretion, one or more of the following:
 - (a) The price as quoted by Kiwi Insulation to the Customer. The quoted price shall not alter providing the Customer accepts Kiwi Insulation's quote in writing within fourteen (14) days of the date of the quotation.
 - (b) Kiwi Insulation's price as specified on Kiwi Insulation's current price list and/or hourly rate as when the goods and/or service is provided.
- 3.2. Any change or variation to the specified work, design, plan or service provided, will be charged on the same rates as per Kiwi Insulation's quoted price. Charges for the variation to the quoted work will be invoiced as a variation to the quotation or agreed installation and shall be payable immediately on the completion of the work.

4. Payment Terms

- 4.1. Payment shall be at Kiwi Insulation's sole discretion one or more of the following:
 - 4.2. Payment to approved customers shall be made by instalments in accordance with Kiwi Insulation's payment schedule.
 - 4.3. Payment shall be made no later than (7) seven days after the date stated on the invoice.
 - 4.4. Payment to approved customers shall be made no later than the 20th day of the following month after the date of the invoice.
 - 4.5. Final Payment: Upon Completion of the Work, Kiwi Insulation shall render the final payment claim.
 - 4.6. Payment in full shall be due no later than (7) seven days following the date stated on the invoice, which is delivered to The Customer or posted to the Customer's address or address for notices.
- 4.7. Payments will be made as agreed between Kiwi Insulation and the Customer. If no payment arrangement is made or payment terms agreed then payment shall be due as stated on the Invoice in cash, cheque, or by, or by direct credit to Kiwi Insulation's nominated account.
- 4.8. Payment shall not be deemed to have been received unless the payment is made in cash or cleared funds are deposited in Kiwi Insulation's nominated account. Any other form of payment will not be accepted as paid until the transaction is deemed to be honoured.
- 4.9. GST and other taxes and duties that may apply will be added to the Price unless they are expressly included in the Price.

5. Acceptance Of Terms Of Trade

- 5.1. Any engagement of Kiwi Insulation's Services including the supply of goods or Services to the Customer shall constitute acceptance of the Terms and Conditions of Trade of Kiwi Insulation by the Customer. Should more than one Customer enter into this agreement the Customers shall be jointly and severally liable for payment in full of the Price.
- 5.2. The Customer must be either the rightful legal Customer or have the full authority of the legal Customer of the Property or Land to enter into a contract or provide instructions to Kiwi Insulation to undertake work or provide goods or services.
- 5.3. The Terms and conditions of this agreement can only be amended with the written consent of Kiwi Insulation and shall be binding on the Customer.
- 5.4. In the event that the Customer proposes any change to the structure of the Customers business, a change in Shareholding, Name, Directors, Premises, postal address, registered office or Sale of the business the Customer shall give no less than fourteen (14) days written notice of the proposed change or changes. If any loss is incurred by Kiwi Insulation the Customer shall be liable for any loss suffered by Kiwi Insulation due to the Customer not complying with this provision.

6. Title to Goods

- 6.1. Ownership and Title of any goods supplied by Kiwi Insulation to the Customer shall not take effect until:
 - (a) The Customer has paid Kiwi Insulation all invoiced amounts owing for the Goods and fulfilled all obligations to Kiwi Insulation in relation to this agreements.
 - (b) Any form of payment made by the Customer to Kiwi Insulation other than cash shall not be deemed to be payment until that form of payment has been cleared in accordance with clause 4.6 and until then Kiwi Insulation's rights and Ownership in relation to the Goods shall continue. It is also agreed that:
 - (c) Once an order for Goods or provision of Services is placed, no order may be withdrawn, revoked or cancelled without Kiwi Insulation's written consent.
 - (d) If any part of the goods shall become incorporated into land so as to lose its separate identity then the title of that proportion of the goods so integrated equal in value to the price owed to Kiwi Insulation shall be reserved and vested in Kiwi Insulation until all money the Customer owes to Kiwi Insulation has been paid in full.

7. Defects

- 7.1. The Customer shall inspect the Goods and Services provided by
- 7.2. Kiwi Insulation and shall within six (6) months of delivery (time being of the essence) notify Kiwi Insulation of any alleged defect, damage or failure to comply with the description or quote. The Customer shall afford Kiwi Insulation an opportunity to inspect the goods or services provided within a reasonable time following completion of the service provided or delivery of goods or completed installation if the Customer believes the Goods or Services to be defective in any way. If the Customer shall fail to comply with these provisions the completed works shall be presumed to be free from any defect. For defective Works, Kiwi Insulation's liability is limited to undertaking remedial work on the agreed fault.

8. Compliance with Laws

- 8.1. The Customer and Kiwi Insulation shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 8.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works unless otherwise agreed in writing with Kiwi Insulation.
- 8.3. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

9. Insurance

- 9.1. Kiwi Insulation shall maintain public liability insurance of at least \$2,000, 000 indemnifying the Owner against claims arising from the operations of Kiwi Insulation or subcontractor in relation to the works.
- 9.2. The Customer shall advise the Owners insurers of the works to be undertaken and shall ensure the property and existing buildings are fully insured for the term of the Contract. The Customer shall indemnify Kiwi Insulation from any claim arising from the Owner Customer not obtaining adequate insurance cover from their insurers.

10. Personal Property Securities Act 1999 ("PPSA")

- Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) A security interest is taken in all Goods previously supplied by Kiwi Insulation to the Customer (if any) and all Goods that will be supplied in the future by Kiwi Insulation to the Customer.
- The Customer undertakes to:
- (c) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Kiwi Insulation may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (d) Indemnify, and upon demand reimburse, Kiwi Insulation for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (e) Not register a financing change statement or a change demand without the prior written consent of Kiwi Insulation; and
 - (f) Immediately advise Kiwi Insulation 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.

- 15.1. Kiwi Insulation and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by Kiwi Insulation, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Customer shall unconditionally ratify any actions taken by Kiwi Insulation under clauses 15. to 15.1.

11. Warranty

- 11.1. For Goods not supplied by Kiwi Insulation, the warranty shall be the current warranty provided by the manufacturer of the Goods. Kiwi Insulation shall not be responsible for or bound by any term, representation made, or warranty given other than that which is given by the manufacturer of the Goods.
- 11.2. Subject to the warranty conditions as set out in Clause 11.1 Kiwi Insulation warrants that if any fault in any of Kiwi Insulation's workmanship comes to the Customer's attention and is reported to the Kiwi Insulation within (2) two years after completion of the works (time being of the essence) Kiwi Insulation will either (at the Kiwi Insulation's sole discretion) replace or remedy the defective workmanship.

12. Default and Consequences of Non Payment

- 12.1. If the Customer defaults in payment of any invoice when due, the Customer shall pay all costs and disbursements incurred by Kiwi Insulation in pursuing the debt including legal costs on a solicitor and own Customer basis and Kiwi Insulation's collection agency costs. Disbursements incurred by Kiwi Insulation in pursuing the debt including legal costs on a solicitor and own Customer basis and Kiwi Insulation's collection agency costs.
- 12.2. Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date

- 12.3. payment is received at a rate of 2.5% per calendar month and all interest shall compound monthly before and after any judgement until payment is received in full.

- 12.4. Kiwi Insulation at its discretion may suspend or terminate the supply of goods and/or services should the Customer, at any time be in breach of any obligation to Kiwi Insulation (including those relating to payment). Kiwi Insulation will not be liable for any loss or damages the Customer has deemed to have suffered because Kiwi Insulation has exercised his rights under this clause.

- 12.5. If any account remains overdue after thirty (30) days then an amount of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) whichever is the greater, shall be charged for administration fees and shall become immediately due and payable.

- 12.6. Without prejudice to Kiwi Insulation other remedies at law, Kiwi Insulation shall be entitled to cancel all or any part of any supply agreement with the Customer which remains unfulfilled and all amounts owing to Kiwi Insulation shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Kiwi Insulation becomes overdue of payment, or in Kiwi Insulation's opinion the Customer will be unable to meet his payments as they become due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, liquidator, manager (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. Right of Cancellation

- 13.1. Kiwi Insulation may cancel any contract to which these Terms and Conditions apply or cancel the delivery of materials products or goods or Service at any time before the materials, products or goods and alike are delivered by giving written notice to the Customer. On giving notice Kiwi Insulation shall repay to the Customer any sums paid in respect of the Price. Kiwi Insulation shall not be liable for any damages or losses arising from such cancellation.
- 13.2. Should the Customer cancel any contract with Kiwi Insulation the Customer shall be liable for any loss incurred by Kiwi Insulation (including but not limited to loss of profits) up to the time of Cancellation.

14. Security Agreement

- 14.1. Despite anything to the contrary contained in these Terms and Conditions or any other rights which Kiwi Insulation may have:
 - (a) Where the Customer and/or the Guarantor (if any) is the Owner of land, realty, asset or property capable of being charged, the Customer and/or Customers Guarantor agree to mortgage and/or charge all or any of their joint and/or several interest in the said land, realty, asset or property to Kiwi Insulation or Kiwi Insulation's nominee to secure all amounts and other monetary obligations due and payable under these terms and conditions.
 - (b) The Customer and/or the Guarantor acknowledge and agree that
 - (c) Kiwi Insulation (or Kiwi Insulation's nominee) shall be entitled to
 - (d) lodge where appropriate a caveat over the said land, realty asset or property.
 - (e) Once all payments and other monetary obligations payable to Kiwi Insulation hereunder have been met the caveat shall be removed.
 - (f) The Customer and/or Guarantor shall indemnify Kiwi Insulation against all Kiwi Insulation's costs, any disbursements and any legal costs incurred on a solicitor Customer own basis in the event Kiwi Insulation elect to proceed in any manner in accordance with this clause and/or its sub-clauses.
 - (g) The Customer and/or the Guarantor (if any) agree to irrevocably appoint Kiwi Insulation's nominated attorney as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

15. Privacy Act 1993

- 15.1. The Customer and the Guarantor/s (if separate to the Customer) authorises Kiwi Insulation to: collect, use and retain any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and disclose information about the Customer, whether collected by Kiwi Insulation from the Customer directly or obtained by Kiwi Insulation from any other party, 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 Customer.

- 15.2. Where the Customer and/or Guarantors are an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.

- 15.3. The Customer and/or Guarantors shall have the right to request Kiwi Insulation for a copy of the information about the Customer and/or

- 15.4. Guarantors retained by Kiwi Insulation and the right to request Kiwi Insulation to correct any incorrect information about the Customer and/or Guarantors held by Kiwi Insulation.

16. The Construction Contracts Act 2002

- 16.1. The Customer hereby expressly acknowledges that:
 - (a) Kiwi Insulation has the right to suspend work within five (5) working days of written notice of his intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Kiwi Insulation by a particular date; and
 - (iv) Kiwi Insulation has given written notice to the Customer of his intention to suspend the carrying out of construction work under the construction contract.
 - (b) If Kiwi Insulation suspends work, he:
 - (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 Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) Keeps his 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 Kiwi Insulation exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Kiwi Insulation under the Contractual Remedies Act 1979; or
- 16.2. Enable the customer to exercise any rights that may otherwise have been available to the customer under the Act as a direct consequence of Kiwi Insulation suspending work under this provision.

17. Risk

- 17.1. If Kiwi Insulation retains Ownership of the Goods nonetheless, all risk for the Goods passes to the Customer when the goods are delivered.
- 17.2. If any of the Goods are damaged or destroyed following delivery but prior to Ownership passing to the Customer, Kiwi Insulation is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Kiwi Insulation is sufficient evidence of Kiwi Insulation's rights to receive the insurance proceeds without the need for any person dealing with Kiwi Insulation to make further enquiries.

18. Delivery

- 18.1. At Kiwi Insulation's sole discretion delivery of the Goods shall take place when:
- 18.2. Delivery of the Goods from a supplier to Kiwi Insulation or a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 18.3. Delivery of the Goods from Kiwi Insulation to the Customer, at the Customers nominated address or nominated third party is deemed to be delivery to the Customer for the purposes of this agreement.
- 18.4. The failure of Kiwi Insulation to deliver shall not entitle either party to treat this contract as repudiated.
- 18.5. Kiwi Insulation shall not be liable for any loss or damage whatsoever due to failure by Kiwi Insulation to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Kiwi Insulation.

19. Dispute Resolution

- 19.1. All disputes and differences between the Customer and Kiwi Insulation touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996

20. General

- 20.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the existence, validity legality and enforceability of the remaining provisions shall not be prejudiced, affected or impaired.
- 20.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Nelson New Zealand or as otherwise directed by the Court.
- 20.3. Kiwi Insulation shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Kiwi Insulation of these terms and conditions.
- 20.4. In the event of any breach of this contract by Kiwi Insulation the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the contract price for Services provided and limited to the amount of monies paid to Kiwi Insulation by the Customer in Part or Full whichever is the lesser amount.
- 20.5. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Kiwi Insulation.
- 20.6. Kiwi Insulation may license or sub-contract all or any part of his rights and obligations without the Customer's consent.
- 20.7. Kiwi Insulation reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Kiwi Insulation notifies the Customer of such change.
- 20.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 20.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.10. The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Kiwi Insulation's right to subsequently enforce that provision.