

**1. Definitions**

- 1.1 "Harkin Roofing" means Harkin Roofing BOP Ltd, its successors and assigns or any person acting on behalf of and with the authority of Harkin Roofing BOP Ltd.
- 1.2 "Client" means the person/s ordering the Works 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 "Works" means all Works or Materials supplied by Harkin Roofing to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between Harkin Roofing 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 delivery of any Works.
- 2.2 These terms and conditions may only be amended with either party consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Harkin Roofing.

**3. Change in Control**

- 3.1 The Client shall give Harkin Roofing 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 Harkin Roofing as a result of the Client's failure to comply with this clause.

**4. Authorised Representatives**

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to Harkin Roofing as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies Harkin Roofing in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Harkin Roofing in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to Harkin Roofing for all additional costs incurred by Harkin Roofing (including Harkin Roofing's profit margin) in providing any Works or variation/s requested thereto by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

**5. Price and Payment**

- 5.1 At Harkin Roofing's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by Harkin Roofing to the Client in respect of Works performed or Materials supplied; or
  - (b) Harkin Roofing's Price at the date of delivery of the Works according to Harkin Roofing's current pricelist; or
  - (c) Harkin Roofing's quoted Price (subject to clause 5.2) which shall be binding upon Harkin Roofing provided that the Client shall accept Harkin Roofing's quotation in writing within thirty (30) days.
- 5.2 Harkin Roofing reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design or as a result of any increase to the Contractor's in the cost of materials and labour) in the event of increases to Harkin Roofing in the cost of labour or materials which are beyond Harkin Roofing's control.
- 5.3 Variations will be charged for on the basis of Harkin Roofing's quotation, and will be detailed in writing, and shown as variations on Harkin Roofing's invoice. The Client shall be required to respond to any variation submitted by Harkin Roofing within ten (10) working days. Failure to do so will entitle Harkin Roofing to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At Harkin Roofing's sole discretion, a deposit may be required, the amount of which will be stipulated on Harkin Roofing's quotation on any other form.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Harkin Roofing, which may be:
  - (a) on completion of the Works; or
  - (b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (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 Harkin Roofing.
- 5.6 No allowance has been made in the Price for the deduction of retentions for any Works carried out for a contract threshold of \$100,000 or less. In the event that retentions are made, Harkin Roofing reserves the right to treat all retentions as placing the Client's account into default.
- 5.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and Harkin Roofing.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Harkin Roofing an amount equal to any GST Harkin Roofing must pay for any supply by Harkin Roofing under this or any other agreement for the sale of the Materials. 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. Delivery and Risk**

- 6.1 Subject to clause 6.2 it is Harkin Roofing's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Harkin Roofing claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Harkin Roofing'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 Works; or
  - (c) notify Harkin Roofing that the site is ready.
- 6.3 Harkin Roofing may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time or date given by Harkin Roofing to the Client is an estimate only. Harkin Roofing shall not be liable for any loss or damage whatsoever due to failure by Harkin Roofing to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Harkin Roofing.
- 6.5 If Harkin Roofing retains ownership of the Materials under clause 7 then;
- (a) where Harkin Roofing is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
    - (i) the Client or the Client's nominated carrier takes possession of the Materials at Harkin Roofing's address; or
    - (ii) the Materials are delivered by Harkin Roofing or Harkin Roofing's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where Harkin Roofing is to both supply and install Materials then Harkin Roofing shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 6.6 The Client shall take delivery of the Materials tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
- (a) such discrepancy in quantity shall not exceed 5%, and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.7 Notwithstanding the provisions of clause 6.5 if the Client specifically requests Harkin Roofing to leave Materials outside Harkin Roofing's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 6.8 The Client acknowledges that any advice or recommendations by Harkin Roofing are provided on the basis of Harkin Roofing's industry knowledge and experience only and shall not be deemed as specialist advice.
- 6.9 The Client acknowledges that Harkin Roofing's quotation for repairs to existing roofs shall be based only on the replacement of damaged tiles and shall not include the replacement of tiles with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of tiles that have slight imperfections but which Harkin Roofing does not deem to be defective or that will affect the integrity of the roof, then this shall be a variation to the original quotation and clause 5.2 will apply.
- 6.10 The Client acknowledges and agrees that no persons other than those authorised or employed by Harkin Roofing are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the works. Harkin Roofing shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause.
- 6.11 The Client acknowledges that Materials supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.

**7. Access**

- 7.1 The Client shall ensure that Harkin Roofing has clear and free access to the work site at all times to enable them to undertake the Works. Harkin Roofing shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Harkin Roofing.

**8. Compliance with Laws**

- 8.1 Both the Client and Harkin Roofing 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 Works, including Worksafe guidelines (including Scaffolding / Edge Fall Protection / Fall through Protection) 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.
- 8.2 Harkin Roofing has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, Harkin Roofing shall not be the person who controls the place of work in terms of the HSW Act.
- 8.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

**9. Title**

- 9.1 Harkin Roofing and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Harkin Roofing all amounts owing to Harkin Roofing; and
  - (b) the Client has met all of its other obligations to Harkin Roofing.
- 9.2 Receipt by Harkin Roofing 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.
- 9.3 It is further agreed that:

---

## Harkin Roofing BOP Ltd – Terms & Conditions of Trade

---

- (a) until ownership of the Materials passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Harkin Roofing on request.
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Harkin Roofing and must pay to Harkin Roofing the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by Harkin Roofing shall be sufficient evidence of Harkin Roofing's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Harkin Roofing to make further enquiries.
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Harkin Roofing and must pay or deliver the proceeds to Harkin Roofing on demand.
- (e) the Client should not convert or process the Materials or intermix them with other Materials but if the Client does so then the Client holds the resulting product on trust for the benefit of Harkin Roofing and must sell, dispose of or return the resulting product to Harkin Roofing as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises Harkin Roofing to enter any premises where Harkin Roofing believes the Materials are kept and recover possession of the Materials.
- (g) Harkin Roofing may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Harkin Roofing.
- (i) Harkin Roofing may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

- 10.1 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 Materials and/or collateral (account) – being a monetary obligation of the Client to Harkin Roofing for Works – that have previously been supplied and that will be supplied in the future by Harkin Roofing to the Client.
- 10.2 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 Harkin Roofing may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Harkin Roofing for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Harkin Roofing; and
  - (d) immediately advise Harkin Roofing of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 10.3 Harkin Roofing and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by Harkin Roofing, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by Harkin Roofing under clauses 10.1 to 10.5.

### 11. Security and Charge

- 11.1 In consideration of Harkin Roofing agreeing to supply the Works, 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).
- 11.2 The Client indemnifies Harkin Roofing from and against all Harkin Roofing's costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising Harkin Roofing's rights under this clause.
- 11.3 The Client irrevocably appoints Harkin Roofing and each director of Harkin Roofing as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

### 12. Client's Disclaimer

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

### 13. Defects In Materials

- 13.1 The Client shall inspect the Materials on delivery and shall within thirty (30) days of delivery (time being of the essence) notify Harkin Roofing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Harkin Roofing an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Harkin Roofing has agreed in writing that the Client is entitled to reject, Harkin Roofing's liability is limited to either (at Harkin Roofing's discretion) replacing the Materials or repairing the Materials.
- 13.2 Materials will not be accepted for return other than in accordance with 13.1 above.

### 14. Warranties

- 14.1 Subject to the conditions of warranty set out in clause 14.2 Harkin Roofing warrants that if any defect in any workmanship of Harkin Roofing becomes apparent and is reported to Harkin Roofing within five (5) years of the date of delivery (time being of the essence) then Harkin Roofing will either (at Harkin Roofing's sole discretion) replace or remedy the workmanship.
- 14.2 The conditions applicable to the warranty given by clause 14.1 are:
  - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (i) failure on the part of the Client to properly maintain any Materials; or
  - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Harkin Roofing; or
  - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
  - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Harkin Roofing shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Harkin Roofing's consent.
- (c) in respect of all claims Harkin Roofing shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 14.3 For Materials not manufactured by Harkin Roofing, the warranty shall be the current warranty provided by the manufacturer of the Materials. Harkin Roofing 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 Materials.
- 14.4 In the case of second hand Materials, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Harkin Roofing as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Harkin Roofing shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
- 15. Consumer Guarantees Act 1993**
- 15.1 If the Client is acquiring Materials 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 supply of Materials by Harkin Roofing to the Client.
- 16. Intellectual Property**
- 16.1 Where Harkin Roofing has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Harkin Roofing, and shall only be used by the Client at Harkin Roofing's discretion.
- 16.2 The Client warrants that all designs, specifications or instructions given to Harkin Roofing will not cause Harkin Roofing to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Harkin Roofing against any action taken by a third party against Harkin Roofing in respect of any such infringement.
- 17. Default and Consequences of Default**
- 17.1 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 Harkin Roofing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Harkin Roofing any money the Client shall indemnify Harkin Roofing from and against all costs and disbursements incurred by Harkin Roofing in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, Harkin Roofing's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Harkin Roofing may have under this contract, if a Client has made payment to Harkin Roofing, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Harkin Roofing under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 17.4 Without prejudice to Harkin Roofing's other remedies at law Harkin Roofing shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Harkin Roofing shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Harkin Roofing becomes overdue, or in Harkin Roofing's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent or bankrupt, 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.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies Harkin Roofing may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Harkin Roofing may suspend or terminate the supply of Works to the Client. Harkin Roofing will not be liable to the Client for any loss or damage the Client suffers because Harkin Roofing has exercised its rights under this clause.
- 18.2 Harkin Roofing may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Harkin Roofing shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Harkin Roofing for Works already performed. Harkin Roofing shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Harkin Roofing as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19. Privacy Act 1993**
- 19.1 The Client authorises Harkin Roofing or Harkin Roofing'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 Harkin Roofing from the Client directly or obtained by Harkin Roofing 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.
- 19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client shall have the right to request Harkin Roofing for a copy of the information about the Client retained by Harkin Roofing and the right to request Harkin Roofing to correct any incorrect information about the Client held by Harkin Roofing.
- 20. Unpaid Seller's Rights**
- 20.1 Where the Client has left any item with Harkin Roofing for repair, modification, exchange or for Harkin Roofing to perform any other service in relation to the item and Harkin Roofing has not received or been tendered the whole of any moneys owing to it by the Client, Harkin Roofing shall have, until all moneys owing to Harkin Roofing are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Materials.
- 20.2 The lien of Harkin Roofing shall continue despite the commencement of proceedings, or judgment for any moneys owing to Harkin Roofing having been obtained against the Client.
- 21. Construction Contracts Act 2002**
- 21.1 The Client hereby expressly acknowledges that:
- (a) Harkin Roofing has the right to suspend work 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 Harkin Roofing by a particular date; and
- (iv) Harkin Roofing has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Harkin Roofing suspends work, 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 Harkin Roofing exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Harkin Roofing under the Contractual Remedies Act 1979; or
- (i) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Harkin Roofing suspending work under this provision.
- 22. General**
- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 22.2 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 New Zealand.
- 22.3 Harkin Roofing 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 Harkin Roofing of these terms and conditions (alternatively Harkin Roofing's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 22.4 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 Harkin Roofing nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). Harkin Roofing may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Harkin Roofing's sub-contractors without the authority of Harkin Roofing.
- 22.6 The Client agrees that Harkin Roofing may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Harkin Roofing to provide Works to the Client.
- 22.7 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.
- 22.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.