

**GENERAL TERMS OF SUPPLY AND INSTALLATION OF LYSAGHT BUILDING SOLUTIONS PTY LTD TRADING AS KITELEY'S ROOFING  
WORLD ABN 61 103 232 444 ("Kiteleys")**

**Effective: 7 November 2023**

## 1. General

1.1 In this contract:

- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (b) **Consumer** means a person who acquires Work pursuant to a Consumer Contract as defined in section 23(3) of the Australian Consumer Law;
- (c) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (d) **Force Majeure** shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, transport delays, accidents, breakdown of plant or machinery, non delivery or shortage of supplies or any other cause beyond the Affected Party's control but specifically excludes the lack of availability of funds or inability to make payments when due;
- (e) **Inclement Weather** means wind, rain, dew, fog, sleet, snow, heat and/or lightning;
- (f) **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and confidential information, and other results of intellectual activity in any field whether or not registrable, registered or patentable. These rights include rights in applications to register these rights and all renewals and extensions of these rights;
- (g) **Law** means:
  - i. legislation, regulations, by-laws, orders, awards, proclamations and statutory instruments imposed or enforced by any applicable government, agency or authority;
  - ii. any written instrument which constitutes a requirement of an organisation which has jurisdiction in connection with the supply of the Goods; and
  - iii. principles of common law and equity established by decisions of the courts;
- (h) **Losses** means all losses, damages, liabilities, costs, charges, expenses, claims, actions, suits or proceedings;
- (i) **Purchaser** means a person, being an incorporated or unincorporated business or an individual, who acquires Work (including Goods), and includes a Consumer or Small Business;
- (j) **Related Corporation** has the meaning given to the term "related body corporate" in the Corporations Act;
- (k) **Small Business** means a purchaser that acquires Work pursuant to a Small Business Contract as defined in section 23(4) of the Australian Consumer Law;
- (l) **Temporary Works** means the provision of safeguards to protect persons working at heights, including but not limited to fall protection equipment required by any relevant Occupational Health and Safety laws and any WorkCover NSW Codes of Practice;
- (m) **Terms** means these general terms and any specifications agreed by the parties in writing; and
- (n) **Work** means the supply and installation of any good, products and materials including Temporary Works (**Goods**) the subject of a quotation. Unless otherwise indicated, any reference to Work also includes the supply and installation of any Temporary Works;

1.2 All quotations made by Kiteleys and accepted by the Customer are subject to these general terms and any special terms which are agreed to by the parties in writing.

1.3 The agreement to perform the Work for the Customer starts on the date notified by Kiteley's or as otherwise agreed with the Customer. This may not be the date the quotation is accepted by the Customer.

1.4 The law applicable to the agreement between Kiteleys and the Customer is the law of the State of New South Wales. Kiteleys and the Customer submit to the jurisdiction of the courts of the State of New South Wales.

## 2. Price

2.1 The Contract Price quoted by Kiteleys is valid for three calendar months from the date of the quotation.

2.2 The Contract Price does not include:

- (a) subject to 2.3 below, delay which is not caused by Kiteleys including the resulting increased cost of the Temporary Works;
- (b) any Exclusions specified in the quotation; and
- (c) where the height from level ground to the top of the top plate is greater than 3.2 metres, the cost of scaffolding to be provided by the Purchaser.

*[The Contract Price may be varied by the above clause]*

2.3 If due to a delay which is not caused by Kiteleys, Kiteleys incurs an increase in the cost of supplying the Works, Kiteleys reserves the right to increase the Contract Price subject to (a) prior written notice to the Customer and (b) the increase not exceeding the increase incurred by Kiteleys.

*[The Contract Price may be varied by the above clause]*

## 3. Insurance

3.1 Before Kiteleys commences any work under this contract or is given access to the site, Kiteleys must have current insurance cover for:

- (a) public liability insurance to cover liabilities to third parties for death or personal injury or damage to property for an amount not less than \$10,000,000;
- (b) employer's liability and workers' compensation insurance to cover any employees;
- (c) property damage insurance for the Work (including work in progress and materials) for the full reinstatement and replacement cost;
- (d) home warranty insurance if the contract is over \$20,000 to cover defective and incomplete work (a certificate of home warranty insurance must be provided for any work valued at more than \$20,000 before the Work starts or before any payment is made under the contract); and
- (e) Insurance cover for non-completion of the work for a period of 12 months from failure to commence, or cessation of the works.

## 4. Payment

4.1 The Customer must pay for the Work according to the schedule set out in the Payment Schedule section of the quotation (if specified). Such payment must be made by the Customer within 5 days of a notice received in accordance with clause 4.2.

4.2 Kiteleys will notify the Customer upon completion of a stage set out in the Payment Schedule section of the quotation. If no schedule is specified under clause 4.1, payment is to be made by the Customer on completion of the Works.

4.3 Where the Customer has established an approved credit account with Kiteleys, the Customer shall ensure that payment is made to Kiteleys in accordance with the terms agreed between Kiteleys and the Customer. All payments are required to be made by the Customer at least one hour before the time at which trading banks close for business to enable banking on or before the due date.

4.4 The Customer will not be entitled to any agreed settlement discount where the Customer does not make payment as required by clause 4.3. Where the Customer has made a payment by cheque and has been granted a settlement discount and the cheque is subsequently dishonoured, the Customer will not be entitled to the settlement discount and shall pay Kiteleys the full invoice price for the Works.

4.5 Any credit card payment made by the Customer is subject to a 1.2% surcharge on the payment amount.

*[The Contract Price may be varied by the above clause]*

4.6 Kiteleys reserves the right to charge interest on any amount overdue from the date of default until the date payment is received, at the rate of 1.5% per annum above the prevailing Reference Rate charged by Westpac Banking Corporation for business finance (or if that rate is no longer published, a comparable rate set by Westpac Banking Corporation). All payments made by the Customer will first be applied to the accrued interest.

*[The Contract Price may be varied by the above clause]*

## 5. Default

5.1 Where the Customer defaults in the performance of any of its obligations under this contract (including a failure to pay) ("**Default Event**"), Kiteleys may, without prejudice to any other rights it may have under this contract or at law, notify the Customer of the default and immediately suspend the Work until such time as the Customer has remedied that default.

5.2 If a Default Event occurs, Kiteleys may terminate this or any other agreement for the supply of Work to the Customer if the Customer does not remedy the relevant default within 10 Business Days of receipt of notice of the Default Event.

5.3 If the Customer defaults in any payment and does not remedy the relevant default within 10 Business Days of receipt of notice of the default, commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, Kiteleys may at its option exercise the following rights in addition to any other rights it may have under this contract or at law:

- (a) suspend performance of the Work whether under this contract or otherwise; or
- (b) terminate the contract in relation to Work that has not been performed.

5.4 If:

- (a) any of the events in clause 5.3 occur; or
- (b) in Kiteleys reasonable opinion the payment of any amount in respect of the Goods supplied by Kiteleys is in jeopardy,

and the Goods have not yet been installed, the Customer must (at its cost) return to Kiteleys any Goods to which title is retained by Kiteleys immediately on demand.

5.5 If the Customer does not return the Goods to Kiteleys on demand under clause 5.4, the Customer:

- (a) irrevocably authorises a representative of Kiteleys to enter upon any site where the Goods are located to take possession of the Goods without prior notice;
- (b) indemnifies Kiteleys for all fees (including legal fees on a full indemnity basis), costs and other Losses, incurred or suffered by Kiteleys (including any fees, costs and Losses which arise out of a claim made by or against Kiteleys) in connection with retaking possession of the Goods or the exercise by Kiteleys of its rights under this clause..

*[The Contract Price may be varied by the above clause]*

5.6 Kiteleys shall be entitled to resell any Goods which have been returned to it or it has taken into possession under clause 5.4 or 5.5.

## 6. Plans and Specifications

6.1 All plans and specifications for Work to be done under this contract, including any variations to those plans and specifications, are taken to form part of this contract.

6.2 Any agreement to vary this contract, or to vary the plans and specifications for Work to be done under this contract, must be in writing signed by or on behalf of each party to this contract.

6.3 This clause does not apply to a contract of the kind referred to in clause 16 of the *Home Building Regulation 2004*.

## 7. Variations

7.1 The Work including materials may only be varied by written agreement between the Customer and Kiteleys. A notice describing the variation, the cost of the additional or omitted work and any change to the Completion Date must be provided to the Customer, and the notice must then be signed and dated by both parties to constitute acceptance. The price of extra work (which includes GST) will be added to the Contract Price. The cost of omitted work will be deducted from the Contract Price.

*[The Contract Price may be varied by this clause]*

## 8. Materials or special orders

8.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of Kiteleys or elsewhere are approximations only. They are intended by Kiteleys to be a general description for information and identification purposes and do not create a sale by description. Kiteley's reserves the right at any time to:

- (a) produce goods, products or materials with such minor modifications from its drawings and specifications as it sees fit provided it does not adversely impact the Customer; and
- (b) alter specifications shown in its promotional literature to reflect changes made after the date of such publication.

8.2 Kiteleys shall not be bound to accept any change in product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order for Work after Kiteleys has ordered special materials or commenced tooling for manufacture.

8.3 Unless specified in the quotation, standard flashings will be provided at the discretion of Kiteleys.

*[The Contract Price may be varied by this clause]*

8.4 Downpipe nozzle locations are the sole responsibility of the Customer and its nominated builder.

8.5 The provision of trade waste bins are the sole responsibility of the Customer and its nominated builder.

## 9. Delivery and Risk

9.1 Unless specified in the quotation, Kiteleys will make all reasonable efforts to deliver the Goods within 5 business days from the date of acceptance of the quotation. The Customer acknowledges that delivery time and commencement of the Work will be subject to the availability of trades and the occurrence of any inclement weather. Dates and times quoted for delivery are estimates only. If Kiteley's cannot deliver the Goods by the estimated dates and times, it will provide the Customer with revised estimated dated and times for delivery.

9.2 Unless otherwise agreed by Kiteley's, the Goods will be delivered to the address nominated in the quotation and delivery shall be deemed to occur when the Goods have arrived and are ready for unloading at the nominated site. The Goods are at the Customer's risk from the time at which they are delivered to the Customer or its nominee.

9.3 Where Goods are delivered the following shall apply:

- (a) Kiteleys reserves the right to charge the Customer any reasonable costs which it incurs as a result of any delay caused by the Customer in unloading the Goods or where unloading of the Goods cannot be effected, including, if applicable, a reasonable

return delivery fee (at prevailing freight rates provided Kiteleys will use reasonable endeavours to minimise cost);

- (b) the unloading of the Goods is the Customer's responsibility at its own cost and risk but Kiteleys or its transport contractor may, without liability to Kiteleys, unload the Goods if the Customer requests Kiteleys to do so or is absent from the nominated site when the Goods arrive and the Customer releases and forever discharges Kiteleys and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the nominated site.

*[The Contract Price may be varied by the above clause]*

- 9.4 Kiteleys expressly reserves the right to deliver the Goods by instalments. Failure to deliver any one instalment by the date and time quoted for delivery of that instalment (if any) shall not entitle the Customer to terminate the contract.
- 9.5 No defect or claim in respect of Goods delivered shall entitle the Customer to reject delivery of any other part of the Goods which are not subject to any defect or claim.
- 9.6 If a party ("**Affected Party**") is prevented either directly or indirectly from performing any of its obligations under this contract (other than an obligation to pay), including without limitation, performing the Work or any part of the Work, by reason of Force Majeure it will be entitled, at its option, by notice to the other party, either to:
- (a) extend the time for performance of its obligation for a reasonable period;
- (b) where the Affected Party is Kiteleys, subject to refunding the Customer for any payment already made to Kiteleys in respect of that particular Work (if any), terminate the contract in relation to Work that have not been performed,

and the other party will not have any claim against the Affected Party for damages or any other remedy for breach of contract.

- 9.7 If, due to an event of Force Majeure, the Work has not been performed by the date which is 3 months after the Completion Date, the Customer may terminate the order in respect of the Work which has not been performed by giving not less than 14 days written notice to Kiteleys. .

## 10. Title

- 10.1 Kiteleys shall remain the legal and equitable owner of Goods supplied until Kiteleys has received payment in full in respect of the Work or all other moneys owing by the Customer to Kiteleys. In the case of payment by cheque, payment shall not be deemed to be received by Kiteleys until the cheque has been cleared by the bank on which it is drawn.
- 10.2 Until title to and ownership of the Goods passes to the Customer, the Customer must hold the Goods (if the Goods are not yet installed) for Kiteleys as bailee, store the Goods properly and separately from the Customer's own goods and retain them in good and merchantable condition. The Customer must not create any encumbrance over the Goods which is inconsistent with Kiteleys title and ownership to the Goods.

## 11. Damage, Delay, Inaccuracies and Defects

- 11.1 The Customer warrants that it has reviewed the quotation for any inaccuracies and that the Work specified in the quotation meets the requirements of the Customer.
- 11.2 The Customer will promptly notify Kiteleys of any alleged defects in the Goods or the Work within 14 days after completion of the Work and will provide Kiteleys with all necessary details to enable Kiteleys to assess the alleged defect.
- 11.3 Unless otherwise agreed in writing and attached to this contract, the Completion Date of the Work set out in the quotation (if any) is an estimate only and Kiteleys will not be liable for any reasonable delay incurred in completing the Work.
- 11.4 The Customer must provide access for Kiteleys and any employee or subcontractor of Kiteleys to carry out the Work as required during work hours allowed by any relevant authority.
- 11.5 The site must be available for Kiteleys to commence and carry out the Work on the dates notified by Kiteley's or otherwise agreed with the

Customer for commencement and for the carrying out of the Work. If Kiteleys is unable to commence or carry out the Work on a scheduled date due to delay caused by the Customer or third parties at the site (including other tradespeople engaged by the Customer or the Customer's nominee but excluding Kiteleys agents or subcontractors), Kiteleys may charge the Customer any reasonable costs incurred by Kiteleys arising from such delay provided Kiteleys will use reasonable endeavours to try to minimise this cost.

*[The Contract Price may be varied by this clause]*

- 11.6 The Customer is responsible for ensuring that no other trades are working below the area where Kiteleys is performing the Work. Kiteleys is not liable for any delay caused by the failure of the Customer to comply with this clause.
- 11.7 Kiteleys must make good any loss or damage to the Work or property of the Customer caused by Kiteleys or Kiteleys employees, agents or subcontractors.

## 12. Quality of Construction

12.1 All work done under this contract will comply with:

- (a) the Building Code of Australia (to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act); and
- (b) all other relevant codes, standards and specifications that the work is required to comply with under any law; and
- (c) the conditions of any relevant development consent or complying development certificate.

12.2 Despite subclause 12.1, this contract may limit the liability of Kiteleys for a failure to comply with subclause 12.1 if the failure relates solely to:

- (a) a design or specification prepared by or on behalf of the Customer (but not by or on behalf of Kiteleys); or
- (b) a design or specification required by the Customer, if Kiteleys has advised the Customer in writing prior to the commencement of the Work that the design or specification contravenes subclause 12.1.

## 13. Temporary Works

13.1 The Temporary Works shall, unless otherwise expressly agreed by Kiteleys, be and remain the property of Kiteleys and any payment made with respect to them shall be deemed to be a charge in respect of their use. These and any other special tools, jigs, fixtures and patterns acquired or supplied by Kiteleys for the fulfilment of the Work are the property of Kiteleys and are not to be used without its authority.

## 14. Warranties, Liabilities and Indemnities

- 14.1 To the extent required by the *Home Building Act 1989* (NSW), Kiteleys warrants that:
- (a) the Work will be performed in a proper and workmanlike manner and in accordance with the plans and the specifications attached to this contract;
- (b) all materials supplied by Kiteleys will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
- (c) the Work will be done in accordance with, and will comply with, the *Home Building Act 1989* (NSW) or any other law;
- (d) the Work will be done with due diligence and within the time stipulated in this contract, or if no time is stipulated, within a reasonable time;
- (e) if the Work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the Work will result, to the extent of the Work conducted, in a dwelling that is reasonable fit for occupation as a dwelling; and
- (f) the Work and any materials used in doing the Work will be reasonably fit for the specified purpose or result, if the Customer expressly makes known to Kiteleys, or other person with express or apparent authority to enter into or vary contractual arrangements on behalf of Kiteleys, the particular purpose for which the Work is required or the result that the Customer desires

to be achieved, so as to show that the Customer relies on the Kiteleys skill and judgement.

14.2 Except to the extent expressly otherwise specified in the terms of any applicable written warranty provided by Kiteleys, Kiteleys liability to the Customer (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the Work, is limited, to the maximum extent permitted by applicable law (including the Australian Consumer Law), at Kiteleys option, to:

- (a) in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
- (b) in the case of the installation of the Goods, the reinstallation of the Goods or paying for the cost of reinstalling the Goods.

14.3 Subject to clause 14.5, to the maximum extent permitted by applicable law and except to the extent to which Kiteleys expressly accepts liability under clause 14.2, Kiteleys is not liable to the Customer or anyone else in connection with the Goods or the Work for any Losses:

- (a) arising from any act or omission on the part of the Customer or any of its officers, employees, agents or contractors;
- (b) (including without limitation for damage to the Goods or any other property, or injury to any person) arising from:
  - (i) the loading, unloading or delivery of the Goods;
  - (ii) a failure to deliver, or delay in delivering, the Goods;
  - (iii) work undertaken by third parties (excluding Kiteleys agents or subcontractors);
  - (iv) the removal of defective Goods or the installation of replacement Goods; or
  - (v) the use of the Temporary Works or any tool or equipment loaned or hired out by Kiteleys; and
- (c) in relation to any claim, action or proceeding by a third party against the Customer (or any Losses incurred or suffered by the Customer as a result of any such claim, action or proceeding); and
- (d) any damage to the Goods, damage to or defects in the Work or delay to the Work caused by third parties including, other tradespeople engaged by the Customer or the Customer's nominee but excluding Kiteleys agents or subcontractors.

14.4 Subject to clause 14.5, the Customer indemnifies Kiteleys and each of its officers, employees and agents from and against all Losses arising out of or relating to:

- (a) Kiteleys use of or reliance on any materials, design, drawing or specification provided to Kiteleys by the Customer (including any allegation or claim that any such use or reliance by Kiteleys infringes the Intellectual Property Rights of any person);
- (b) any loss or damage caused by or during the processing of materials supplied to Kiteleys by the Customer;
- (c) any loss or damage caused by the Temporary Works or any tool or equipment, or the use of the Temporary Works or any tool or equipment, hired out by Kiteleys to the Customer;
- (d) any damage to the Goods, damage to or defects in the Work or delay to the Work caused by third parties including, other tradespeople engaged by the Customer or the Customer's nominee but excluding Kiteleys agents or subcontractors; and
- (e) any damage caused or arising from work undertaken by third parties (excluding Kiteleys agents or subcontractors).

14.5 Where the Customer is a Consumer or Small Business:

- (a) the Customer's liability to indemnify Kiteleys under clause 14.4 will be reduced proportionately to the extent that Kiteleys fraud, negligent act or omission, error, or wilful misconduct has contributed to the loss; and
- (b) under clause 14.3, Kiteleys will be proportionately liable to the Consumer or Small Business but only to the extent that Kiteleys fraud, negligent act or omission, error, or wilful misconduct contributed to the loss or damage.

14.6 Except to the extent permitted by law or arising from any fraud or wilful misconduct, but notwithstanding anything else contained in this contract, neither party will be liable to the other in relation to any indirect or consequential loss or damage, including any loss of actual or anticipated savings, loss of opportunity, loss of revenue, loss of income, business interruption, loss or profit, loss of business, loss of contracts, loss of investment, damage to goodwill or damage to business reputation, or other economic loss, however arising.

## 15. Miscellaneous

15.1 The Customer is responsible for all approvals and permits required to undertake the Work.

15.2 Kiteleys and the Customer may conduct business by Electronic Data Interchange (EDI). The Customer agrees that if it has EDI capability with Kiteleys EDI is the preferred method of conducting business.

15.3 Kiteleys and the Customer agree that EDI will be conducted in accordance with the terms of any Electronic Trading Partner Agreement to which they are parties and into which these terms are incorporated.

15.4 Subject to clause 15.5, neither party may assign, transfer or novate any of its rights or obligations under this contract unless it obtains the prior written consent of the other party.

15.5 Nothing in this contract restricts Kiteleys from assigning, declaring a trust over, transferring or otherwise dealing with any receivables owed to it by the Customer under this contract, together with any associated rights and interests (including any related security) in favour of any third party. With notice to the Customer, Kiteleys may assign this contract to any of its Related Corporations or, in the case of a sale of business, to any third party which acquires all or substantially all of the assets of Kiteleys which are used in the performance of the obligations arising under this contract.

15.6 Unless otherwise expressly stated in this contract, a notice, consent or other communication is effective if it is given or served on Kiteleys:

- (i) by delivering it to a person who is or who is apparently concerned in the management of Kiteleys;
- (ii) by leaving it at Kiteleys principal place of business with a person apparently employed there, being a person who has or who apparently has attained the age of 16 years, or
- (iii) by posting it in a letter addressed to Kiteleys at the address on the quotation; or
- (iv) by sending it to an email address provided for Kiteleys, by a person apparently concerned in the management of Kiteleys, for the purpose of the service of notices or other documents on the Kiteleys; or
- (v) by sending it by facsimile transmission to a facsimile number provided for Kiteleys, by a person apparently concerned in the management of the Kiteleys, for the purpose of the service of notices or other documents on Kiteleys.

15.7 A notice or document that is delivered, left or posted in accordance with this clause is to be taken to have been given or served on its being so delivered or left or, if it is posted, is (in the absence of evidence to the contrary) to be taken to have been given or served within two (2) Business Days of sending.

15.8 A right may only be waived in writing, signed by the party giving the waiver.

15.9 This contract (including the quotation) contains the entire agreement between the parties about its subject matter. Any previous understanding or agreement about that subject matter is replaced by this contract and has no further effect.

15.10 Any provision of this contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this contract enforceable, unless it would materially change the intended effect of this contract.