

## Terms and Conditions of Trade

Est. 1966 | Upper Hutt & Wellington

Effective: [DATE] | Current version always available at [www.silbery.co.nz/terms](http://www.silbery.co.nz/terms)

*By placing an order, opening a credit account, or accepting delivery of goods from Silbery Roofing Ltd, the Customer acknowledges and agrees to be bound by these Terms and Conditions of Trade ('Terms'). These Terms apply to every contract for the supply of goods by Silbery Roofing Ltd.*

### 1. INTERPRETATION

In these Terms, the following definitions apply:

"Silberys" or "the Company" means Silbery Roofing Ltd (NZBN 9429037147266), a company incorporated in New Zealand, and includes its employees, agents, and successors.

"Customer" or "Buyer" means the person or entity placing an order or holding a credit account with Silberys, and includes their successors and permitted assigns.

"Goods" means all metal roofing, flashings, accessories, fasteners, and any other products supplied by Silberys to the Customer from time to time.

"Contract" means any agreement for the supply of Goods, whether arising from a purchase order, quotation acceptance, verbal order, or delivery.

"Price" means the price of Goods as agreed or quoted, exclusive of GST and freight unless otherwise stated in writing.

"Amount Owing" means the unpaid portion of any Price plus any interest, costs, or other amounts recoverable under these Terms.

"PPSA" means the Personal Property Securities Act 1999.

"GST" means goods and services tax as levied under the Goods and Services Tax Act 1985.

"CGA" means the Consumer Guarantees Act 1993.

"Event of Default" means: (i) the Customer fails to pay any Amount Owing by the due date; (ii) the Customer becomes insolvent, enters receivership, liquidation, or statutory management; (iii) the Customer ceases or threatens to cease trading; or (iv) any event occurs or information becomes known that, in Silberys' reasonable opinion, materially affects the Customer's creditworthiness or ability to comply with its obligations.

A reference to any legislation includes that legislation as amended or substituted from time to time.

### 2. PRICES

2(a) All stated prices (whether listed, quoted, or tendered) are exclusive of GST and freight unless otherwise stated in writing.

2(b) Prices are based on rates and conditions applying at the date of order or quotation. Where there is a material increase in the cost of raw materials, steel, coatings, freight, or other inputs between the date of order and the date of manufacture or delivery, Silberys reserves the right to adjust the Price accordingly and will notify the Customer in writing. The Customer may cancel the order within 5 working days of receiving such notice if the increase exceeds 5%.

2(c) Any difference between quantities estimated from plans, sketches, or specifications and actual quantities supplied shall be charged or credited pro-rata and the Contract shall be deemed adjusted accordingly.

2(d) Silberys may change its price list at any time. The applicable price for any order is the price confirmed in writing at the time of order acceptance.

### 3. PAYMENT

3(a) Payment in full is due by the 20th of the month following the month of invoice, unless otherwise agreed in writing. Time is of the essence in respect of the Customer's payment obligations.

3(b) If payment is not received by the due date, Silberys may, without prejudice to any other rights:

- (i) Withdraw any previously agreed discounts or special terms immediately;
- (ii) Charge default interest at the rate of 2% per month (equivalent to 24% per annum), calculated daily from the payment due date until Silberys receives payment in full. Default interest is subject to GST;
- (iii) Suspend supply of further Goods until all outstanding amounts are paid; and
- (iv) Refer the account to a debt collection agency. All recovery costs and expenses, including legal costs on a solicitor-client basis, shall be added to the Amount Owing and recoverable from the Customer.

3(c) Payments received after the due date will be applied first to any accrued default interest, then to the outstanding principal amount of any invoices, in order of age.

3(d) "Payment" means receipt by Silberys of cleared funds.

3(e) Silberys reserves the right to require payment in advance, by bank transfer, or by other secured means if it has reasonable concerns about the Customer's creditworthiness.

3(f) The Customer may not set off, withhold, or deduct any amount from any payment due to Silberys, whether by reason of any claim, counterclaim, credit, or other amount the Customer alleges is owed by Silberys.

3(g) Where Silberys holds two or more Contracts with the Customer, Silberys may apply any payment received from the Customer to any Contract or Amount Owing in such order and manner as Silberys thinks fit, regardless of any direction by the Customer to the contrary.

### 4. OWNERSHIP, TITLE RETENTION, AND PPSA

4(a) Notwithstanding delivery, ownership and title in all Goods supplied by Silberys shall remain with Silberys until all Amounts Owing in respect of those Goods, and all other amounts owing by the Customer to Silberys under any other contract or account, have been paid in full ('Payment in Full').

4(b) Until Payment in Full, the Customer:

- (i) Holds the Goods as bailee for Silberys and acknowledges it is in a fiduciary relationship with Silberys in respect of those Goods;
- (ii) Must store the Goods in a manner that clearly identifies them as the property of Silberys and separately from the Customer's own goods;
- (iii) Is authorised to sell or use the Goods in the ordinary course of its business as agent for Silberys. This authority is automatically revoked upon the occurrence of an Event of Default or by written notice from Silberys;
- (iv) Must hold the proceeds of any resale of Goods in a separate, clearly identified account as trustee for Silberys, and must account to Silberys for such proceeds immediately upon receipt;
- (v) Must not charge, mortgage, or encumber the Goods in any way without the prior written consent of Silberys.

4(c) If the Customer fails to pay any Amount Owing by the due date, or an Event of Default occurs, Silberys or its agents may (without prejudice to any other rights) enter the Customer's premises or

any other premises where the Goods are stored during normal business hours, without prior notice, to identify, take possession of, and remove any Goods belonging to Silberys. The Customer irrevocably consents to such entry and may not revoke this consent.

4(d) PPSA Security Interest: The Customer acknowledges that these Terms constitute a security agreement for the purposes of the PPSA and create a security interest in favour of Silberys over all present and after-acquired Goods supplied by Silberys to the Customer, and all proceeds of such Goods. The security interest created under any Contract also secures the Amount Owing under every other Contract between Silberys and the Customer. Silberys may register a financing statement on the Personal Property Securities Register (PPSR) to perfect this security interest. The Customer agrees to do all things necessary to assist Silberys to perfect and maintain its security interest, including signing further documents or providing information as reasonably requested.

4(e) The Customer waives its right to receive a copy of any verification statement in respect of any financing statement registered by Silberys.

4(f) To the extent permitted by law, the Customer and Silberys contract out of section 114(1)(a) of the PPSA (requirement to give notice before disposal of collateral) and the Customer's rights under sections 107(2)(c), (d), (h) and (i) of the PPSA.

4(g) The Customer agrees to indemnify Silberys on demand for all costs and expenses (including legal fees) incurred by Silberys in registering, maintaining, or discharging any financing statement on the PPSR, enforcing any security interest, or complying with any demand made under section 162 of the PPSA.

## 5. QUOTATIONS

5(a) Quotations are prepared on the basis of plans, measurements, or specifications supplied by the Customer. If there is any difference between the final cutting list or order and the original plans or measurements, Silberys reserves the right to charge for any additional materials at the rates applicable at the time of supply.

5(b) A quotation is valid for 30 days from the date of issue unless a shorter period is stated. If the validity period has expired, Silberys will re-quote before accepting the order.

5(c) Once a quotation has been accepted by the Customer, the Customer may not cancel or vary the order without Silberys' prior written consent. Where consent is given, the Customer is liable for all costs incurred by Silberys up to the point of cancellation, including any materials already cut or ordered.

5(d) Silberys reserves the right to charge for additional materials required due to unforeseen but valid circumstances not apparent at the time of quotation. Such additional materials will be charged at the rates set out in the original quotation, or at Silberys' standard rates where no rate was specified.

5(e) Quotations are based on work performed during Silberys' normal business hours. Any request for urgent or out-of-hours work may attract additional charges.

## 6. DELIVERY

6(a) Any delivery dates or timeframes given by Silberys are estimates only. Silberys shall not be liable for any loss or damage arising from late delivery or non-delivery, however caused. The Customer is not entitled to cancel an order or reduce payment as a result of late delivery.

6(b) Delivery is deemed to occur when: (i) Silberys makes the Goods available for collection at its premises; or (ii) where delivery has been agreed, when the Goods are transferred to the Customer, the Customer's representative, or a carrier at the agreed delivery point.

6(c) Where Silberys agrees to deliver Goods to a site nominated by the Customer: (i) the Customer must ensure a safe, suitable, and accessible delivery area is available; (ii) unloading of Goods is at the Customer's expense and responsibility unless expressly agreed otherwise; (iii) waiting time caused by the Customer or the Customer's failure to provide suitable access may be charged at Silberys' standard rates.

6(d) Where Silberys uses its own vehicles for delivery, delivery is deemed to occur upon transfer of the Goods to the Customer or the Customer's nominated recipient at the delivery site.

6(e) Where delivery is to a carrier, delivery is deemed to occur upon handover to the carrier, and freight and transit insurance shall be at the Customer's cost and risk unless otherwise agreed in writing.

6(f) Silberys reserves the right to make partial deliveries and to invoice for each partial delivery separately. Partial delivery does not entitle the Customer to cancel any remaining orders.

6(g) If the Customer is unable or unwilling to accept delivery, Silberys may arrange storage and insurance of the Goods at the Customer's expense. The Goods will be deemed delivered and invoiced accordingly, and payment will become due as if delivery had occurred.

6(h) Silberys reserves the right to withhold delivery if it has reasonable concerns about the Customer's creditworthiness or if any Amount Owing is overdue.

6(i) Delivery of up to 5% more or less of the quantity of standard-length stock items ordered by the Customer constitutes performance of the Contract. The amount under or over supplied shall be adjusted pro-rata and the Price adjusted accordingly. This clause does not apply to custom-manufactured or cut-to-length Goods.

## 7. RISK

7(a) Risk in the Goods passes to the Customer on delivery in accordance with clause 6. From that point, the Customer bears all risk of loss, theft, damage, or destruction of the Goods.

7(b) The Customer must insure the Goods for their full replacement value from the point of delivery until ownership passes to the Customer in accordance with clause 4. The Customer shall note Silberys' interest as a secured party on any such insurance policy and provide evidence of insurance upon request.

7(c) If any Goods are lost, damaged, or destroyed before ownership has passed to the Customer, Silberys is entitled to receive all insurance proceeds payable in respect of those Goods, without prejudice to its right to receive the Price.

## 8. CLAIMS AND RETURNS

8(a) Claims for defective, incorrect, or short-delivered Goods must be made in writing within 7 days of delivery. After this period, Goods are deemed accepted by the Customer.

8(b) No Goods may be returned to Silberys without prior written authorisation. Returned Goods must be accompanied by the original job number and invoice number. Silberys reserves the right to decline any return or to apply a handling or restocking fee.

8(c) Custom-manufactured or cut-to-length Goods cannot be returned unless they are defective.

8(d) Silberys' liability for any accepted claim is limited, at Silberys' option, to: (i) replacement of the Goods; (ii) credit equal to the Price paid; or (iii) repair of the Goods. Silberys' liability does not extend to consequential loss, loss of profit, loss of revenue, or any indirect or special loss howsoever arising.

8(e) Damage to Goods in transit on return to Silberys is at the Customer's risk.

## 9. SUITABILITY AND LIABILITY

9(a) The Customer is responsible for ensuring the Goods selected are suitable for their intended application, environment, and installation requirements. In particular, the Customer must ensure that the grade, type, gauge, and coating of Goods chosen (including colour coatings and fasteners) are suitable for the corrosion zone and environment in which they will be installed. In selecting Goods, the Customer relies on its own skill and judgment.

9(b) The Customer is also responsible for ensuring that Silberys' published advice covering correct selection, storage, handling, installation, and maintenance of the Goods has been obtained and followed. Silberys' product storage guidelines and technical literature are available on request.

9(c) To the fullest extent permitted by law, Silberys excludes all liability for: (i) failure to deliver by a specified date; (ii) events beyond Silberys' reasonable control; (iii) deterioration of Goods after delivery, including deterioration caused by improper storage, exposure, or handling; (iv) Goods being unsuitable for the Customer's intended purpose where that purpose was not disclosed in writing; and (v) any consequential, indirect, special, or economic loss.

9(d) Where Silberys' liability cannot be excluded by law, it is limited to the value of the Goods in respect of which the liability arises.

9(e) Silberys shall not be liable for any claim arising from advice given by Silberys' employees or agents unless confirmed in writing by a director of Silberys.

## 10. CONSUMER GUARANTEES ACT 1993

10(a) Where the Customer acquires Goods for the purposes of a business, the parties agree that the CGA does not apply to the supply of those Goods, to the extent permitted by section 43 of the CGA.

10(b) Where the Customer is a consumer as defined in the CGA (i.e. acquiring Goods for personal, domestic, or household use), nothing in these Terms limits or excludes any right the Customer has under the CGA.

10(c) Where the Customer on-sells Goods manufactured by Silberys, the following provisions apply:

(i) The Customer must not give any express guarantees or make any representations on behalf of Silberys as manufacturer of the Goods without Silberys' prior written consent, except within the limits of any technical literature published by Silberys from time to time.

(ii) The Customer will, wherever appropriate, correctly advise their customers as to the purposes to which the Goods should and should not be put, in accordance with Silberys' published technical literature and best industry practice.

(iii) The Customer must contract out of the CGA effectively and in writing whenever they supply Goods manufactured by Silberys to another party for that party's business purposes, and must notify that party of the effect of the contracting out.

(iv) The Customer must oblige each of their own business customers to likewise contract out of the CGA when on-selling Goods manufactured by Silberys to that customer's own business customers.

(v) The Customer must immediately notify Silberys in writing of any claim or demand received in respect of the Goods under the CGA, and provide full details of the claim.

(vi) Any literature the Customer supplies to their customers relating to the Goods must comply with the CGA.

## 11. FABRICATION WARRANTY

11(a) Where Silberys manufactures or fabricates Goods (including roll-forming, folding, or cutting), Silberys warrants the Goods against defects in workmanship for a period of 12 months from the date of delivery.

11(b) This warranty does not cover: (i) defects arising from the Customer's design, specification, or instruction; (ii) normal wear and tear; (iii) damage caused by improper storage, handling, installation, or maintenance; (iv) damage caused by use of the Goods for purposes other than those for which they were intended; or (v) Goods that have been modified, repaired, or altered by any person other than Silberys without Silberys' prior written consent.

11(c) A claim under this clause must be made in writing within the warranty period and no later than 7 days after the defect becomes apparent. The Customer must provide Silberys with a reasonable opportunity to inspect the Goods.

11(d) Silberys' liability under this clause is limited, at Silberys' option, to: (i) replacement of the defective Goods; (ii) repair of the Goods; or (iii) credit equal to the Price of the defective Goods.

11(e) This warranty is separate from and does not limit any product warranty Silberys may provide in respect of the materials from which the Goods are manufactured (including any COLORSTEEL® or ZINCALUME® warranty). Such product warranties are subject to their own terms and conditions.

## 12. INDEMNITY

The Customer warrants that any design, specification, or instruction it requests Silberys to follow will not cause Silberys to infringe any patent, registered design, trademark, copyright, or any other intellectual property right of any third party. Where Silberys acts on the Customer's design or instruction, the Customer will indemnify Silberys against all damages, penalties, costs, and expenses for which Silberys may become liable as a result.

## 13. FORCE MAJEURE

Silberys shall not be liable for any delay in, or failure of, performance under these Terms where such delay or failure is caused by circumstances beyond its reasonable control, including but not limited to: acts of God, fire, flood, earthquake, storm, pandemic, epidemic, government action, labour disputes, shortage of materials, failure of suppliers, power outages, or transport disruptions. Silberys will notify the Customer as soon as reasonably practicable and will use reasonable endeavours to resume performance as soon as possible.

## 14. PRIVACY ACT 2020

14(a) Silberys collects, holds, uses, and discloses personal information about the Customer and its principals for the purposes of: (i) assessing and managing credit; (ii) administering the Customer's account; (iii) recovering any amounts owing; and (iv) communicating about Silberys' products and services.

14(b) Silberys may disclose personal information to: (i) credit reporting agencies; (ii) debt collection agencies; (iii) Silberys' legal advisers and accountants; and (iv) any other party as required or permitted by law.

14(c) Individuals have the right to access and correct personal information held about them by Silberys, in accordance with the Privacy Act 2020. Requests should be directed to: [accounts@silbery.co.nz](mailto:accounts@silbery.co.nz).

14(d) Silberys is subject to the mandatory breach notification obligations under the Privacy Act 2020 and will notify affected individuals and the Privacy Commissioner of any notifiable privacy breach in accordance with that Act.

## 15. TRUSTEE LIABILITY

If the Customer is a trust, these Terms bind each trustee of that trust personally and in their capacity as trustee. Each trustee's personal liability to Silberys is unlimited unless the trustee is an independent trustee with no beneficial interest in the trust assets, in which case the trustee's liability is limited to the assets of the trust, subject always to any personal guarantee given by that trustee.

## 16. DISPUTE RESOLUTION

16(a) If a dispute arises in connection with these Terms, the parties agree to attempt to resolve it through good faith negotiation before commencing any legal proceedings.

16(b) If the dispute cannot be resolved by negotiation within 10 working days of written notice, either party may refer the dispute to mediation through a mutually agreed mediator, or if agreement cannot be reached, through the New Zealand Dispute Resolution Centre.

16(c) Nothing in this clause prevents Silberys from taking urgent steps to recover unpaid amounts or to recover possession of Goods under clause 4.

## 17. GOVERNING LAW AND JURISDICTION

These Terms are governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts, with the most appropriate venue being the courts of the Wellington region.

## 18. VARIATION AND REVIEW OF TERMS

18(a) These Terms may only be varied by written agreement signed by a director of Silberys.

18(b) Silberys reserves the right to update these Terms at any time. The current version will be published at [www.silbery.co.nz/terms](http://www.silbery.co.nz/terms). Customers are bound by the version of these Terms in effect at the time of each order. Continued ordering of Goods after notice of a change constitutes acceptance of the updated Terms.

## 19. ASSIGNMENT

19(a) The Customer may not assign any rights or obligations under these Terms without Silberys' prior written consent.

19(b) Silberys may assign any of its rights under these Terms without the Customer's consent.

19(c) The Customer must give Silberys not less than 14 days' prior written notice of any change in the Customer's name, business structure, ownership, or contact details.

## 20. ABANDONED GOODS

20(a) If the Customer does not collect Goods within 30 days of Silberys notifying the Customer that the Goods are available for collection, Silberys may, at its discretion:

- (i) Charge storage at a reasonable rate notified to the Customer;
- (ii) Sell or dispose of the Goods and apply the proceeds first to any storage charges, then to any Amount Owing, with any surplus returned to the Customer on request; or
- (iii) Treat the Goods as abandoned.

20(b) Custom-manufactured or cut-to-length Goods not collected within 60 days of notification shall be deemed abandoned and may be disposed of by Silberys without further notice. Silberys is not liable for any loss arising from such disposal, and the Customer remains liable for the Price.

## 21. COMPLIANCE WITH LAWS

If, after the date of a Contract, any change in legislation, regulation, code, or standard applicable to the manufacture or supply of the Goods results in additional costs to Silberys, the Customer agrees to reimburse Silberys for such additional costs. Silberys will notify the Customer and provide reasonable evidence of the additional costs before applying any adjustment.

## 22. SEVERABILITY

If any provision of these Terms is held to be invalid, void, or unenforceable, that provision shall be deemed severed and the remaining provisions shall continue in full force and effect.



## 23. WAIVER

Silberys' failure to enforce any provision of these Terms on any occasion does not constitute a waiver of that provision or of Silberys' right to enforce it on any future occasion. No waiver is effective unless given in writing and signed by a director of Silberys.

## 24. ENTIRE AGREEMENT

These Terms, together with any quotation, order confirmation, credit application, and personal guarantee, constitute the entire agreement between Silberys and the Customer in respect of the supply of Goods and supersede all prior negotiations, representations, undertakings, and arrangements, whether written or oral. The Customer acknowledges that it has not relied on any statement, promise, representation, or warranty made by Silberys that is not set out in these Terms.

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**ALL SALES ARE SUBJECT TO THESE TERMS AND CONDITIONS OF TRADE.**

**ANY OUTSTANDING AMOUNTS WILL BE REFERRED FOR DEBT COLLECTION. ALL RECOVERY COSTS AND EXPENSES, INCLUDING LEGAL COSTS ON A SOLICITOR-CLIENT BASIS AND DEFAULT INTEREST AT 24% PER ANNUM, WILL BE ADDED TO THE AMOUNT OWING.**

*Current version available at [www.silbery.co.nz/terms](http://www.silbery.co.nz/terms)*