

Marley Roofing General Terms

1 Introduction

- 1.1 This document contains the general terms and conditions (our General Terms) for Marley Roofing. The commercial terms of any transaction may be contained in Specific Terms that will incorporate (include) these General Terms. Please check our website www.marleyroofing.co.za for the latest version of these General Terms.
- 1.2 Remember that you must always comply with the Agreement. If you do not understand any terms, you must ask someone to explain them to you.
- 1.3 **These General Terms and any Specific Terms, form an agreement between you and us, so please make sure that you understand all of them.**
- 1.4 **Important terms that may limit our responsibility or involve some risk for you may be in bold and italics. You must pay special attention to these terms.**
- 1.5 By buying any product from us, you accept and agree to these Terms. These Terms also cover any transactions (including any transaction carried out electronically using a computer or network, or in person) where you receive Goods or services from us.
- 1.6 The commercial terms of any transaction between you and us will be contained in the specific document we give you and that document will incorporate (include) these Terms. This means that these general terms and any other document we give you must be read together. These terms will prevail if there is a conflict of meaning and we will update it regularly on our website. Nothing in these Terms obligates either party to enter into any orders or to accept any quotations or tenders.

2 Definitions

We have meanings to words to be consistent. These words usually begin with a capital letter. Singular include the plural and the other way round:

Word	Meaning
2.1 AFSA	The Arbitration Foundation of Southern Africa (or any replacement)
2.2 Agreement	These General Terms and any Specific Terms that incorporate (include) these General Terms.
2.3 Goods	any Goods you buy from us, by, order, tender or from our sales premises.
2.4 Marley Roofing, we or us	Marley (SA) (Pty) Ltd (Registration Number 53/00406/07),
2.5 Purchase Price	Purchase consideration that you will pay us for the Goods.
2.6 You or your	The person who enters into an Agreement with us, including any legal entity (such as a company).
2.7 Working Days	All days excluding Saturdays, Sundays and public holidays.

3 Tender Period

- 3.1 Unless we withdraw a tender or quotation, you are free to accept a quotation for 30 days after the date of the quotation.
- 3.2 If you do not accept it, the tender or quotation will lapse and is no longer valid.

4 Prices

- 4.1 The Purchase Price is as set out in the price lists we give you. These are current and effective on the date of dispatch of the Goods they relate to.
- 4.2 **If our listed Purchase Price has increased or decreased between the date of our tender, quotation (valid for 30 days) or other offer (or, failing that, the date of the contract) and the date of delivery of the Goods to you, the Purchase Price (or discounted price) will be increased or decreased accordingly.**
- 4.3 We will be entitled in our discretion to amend the price list that applies to any or all of the Goods.

5 Payment

- 5.1 The Purchase Price must be paid and cleared before delivery, unless we have arranged other terms of payment with you.
- 5.2 If we have arranged for other terms of payment the following terms will apply, unless otherwise agreed in writing and signed by both parties:
 - Each invoice we issue to you must be paid without deduction within 30 days of the date of the monthly statement for all invoices issued during that month.
 - We may invoice portions of the contract as the contract progresses.
 - If you pay us within 30 days of the date of any statement we **may** allow you a settlement discount.
 - We may charge you interest on any overdue amount at the maximum rate permitted by law. If no maximum is prescribed, the rate will be 3% per month.
 - **If we find that your financial position is not to our satisfaction at any time, we may:**
 - **ask you to pay us in advance; or**
 - **provide us with adequate security for payment****and suspend our obligations in terms of this contract until you have done so.**
 - All prices are exclusive of any tax, impost or other levy which you may have to pay as a result of this Agreement and we will be entitled to ask you to pay these amounts we have paid or to require you to pay them.
 - All payments made in terms of this contract must be made in South African Rand.
 - Payment is payable free of deduction at the address stated on the invoice.

6 Estimates

- 6.1 The estimates we give you related to Goods are based on the stipulated batten spacing and eave overhangs. Where not stipulated industry standards will be applied.
- 6.2 **We are not liable if the estimate is not accurate and you may not claim for shortages or over-supply of Goods.**

7 Delivery

Goods sold are subject to the following conditions:

7.1 **Agency of Transport**

If we deliver the Goods to a carrier you stipulated, delivery will be deemed to take place on delivery to the carrier, who will then be treated as your agent.

7.2 **Collections**

- **If you arrange for the transport the Goods, we are only responsible for the loading of the Goods, not the cost of transport or unloading of the Goods.**
- **Please note that some of our branches only load strapped tiles and you will be responsible for loading loose tiles and fittings.**
- **A loading fee will be charged as per the current price list.**

7.3 **Delivery by Marley Roofing**

7.3.1 **General**

- Unless otherwise agreed in writing, you are responsible for transportation costs to the delivery site, as set out in the current Haulage Price List.
- All deliveries will be done by road to the address given and any changes must be provided in writing prior to delivery.
- **Prior to delivery, a level, good quality surface must be available at the delivery site, for the off-loading of the Goods from the vehicle.**
- **Where we are responsible for off-loading Goods, we will only off load Goods within 2.5 metres from the delivery vehicle.**
- **Please note that some of our branches make special arrangements with customers to off-load themselves.**

7.3.2 **Accessibility**

You warrant that

- all roads leading to the delivery site are well maintained and suitable to deliver the Goods;
- the delivery vehicle has access to the site without having to damage any existing installations, and
- there is a responsible person to point out a legal off-loading point at delivery. If not, our deliverer may make his own decision about off-loading, including:
 - o non-delivery; or
 - o off-loading near the delivery site and you will have to bear the consequences of his choice.
- The Transporter may ask you to sign an indemnity form if he deems it necessary.
- **When you place your order, you must inform Marley Roofing whether there are any truck size or axle combination limitations on the site.**

7.3.3 **Duplicated Trips**

You will bear all costs related to duplicate trips, unless you can prove it was due to our fault.

7.3.4 **Time of delivery**

- If no time is stipulated for delivery we need at least seven Working Days to deliver the Goods.
- If you want delivery by a specific date you must inform us a reasonable time in advance but no later than seven Working Days. **We will not be responsible for any delay in delivery that is beyond our control.**
- Unless specifically provided to the contrary, delivery dates are given in good faith and we will make every endeavour deliver on time, but these delivery dates must be viewed as estimates only.

7.3.5 **Acceptance of delivery**

On delivery you or your agent must sign a delivery note. This delivery note will be proof that the Goods listed on the delivery note were received in good condition and in the correct quantities.

7.4 **Packaging and Crating**

The Purchase Price does not include the cost of packaging and crating. We will, on your request, package and crate the Goods in the manner we usually use and you are liable for the cost.

8. **Force Majeure (Acts of God or nature)**

8.1 **Parties not liable.** We will not be responsible for any breach of the Agreement caused by circumstances beyond our control, including floods, your actions, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, labour unrest, shortages of material or labour, shipping and other transport delays, delays on the part of any manufacturer, supplier or acts of God.

8.2 **Party affected to notify other party.** If there is an event of force majeure, we will tell you immediately, and we will meet within seven days to negotiate other ways to carry out any affected responsibilities under the Agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

8.3 **Reasonable extension.** We will be entitled to a reasonable extension to affect delivery.

8.4 **Cancellation of contract.** If the execution of the contract is not completed within such extended period, you will be entitled to cancel the contract on thirty days written notice asking us to deliver the Goods. When cancelling the contract you need to pay us your proportionate share of the contract price in respect of that portion of the contract which has been executed.

8.5 **Storage costs.** If the execution of the contract is delayed by you, we will be entitled to make a reasonable charge for the storage of the Goods during the period of such delay.

8.6 Any of the terms above also apply to you if we have suffered damages.

9. **Shortages and Breakages on Delivery**

9.1 **When you receive the Goods you must indicate all breakages and shortages on the delivery note.**

9.2 We will investigate all complaints and requests for refunds and returns and will act on it if your complaint has merit.

9.3 Subject to the provisions of this clause, we may:

- refund or credit to you a proportionate share of the purchase price for the Goods, or
- replace the Goods by delivery in the same manner as set out in these Terms, within a reasonable time;
- **Please note: due to the nature of our product we will not be responsible for breakages which are less than 2% of the total delivered Goods.**

10. Condition of Goods, Breakages and Indemnity

- 10.1 We warrant that the characteristics and capabilities of the Goods will be substantially the same as advertised. **Please note: certain differences may occur and in particular no warranty is given as to the colouring of the Goods, whether regarding shades of colour or colour fastness or discolouration due to efflorescence or otherwise.**
- 10.2 **We will not be held responsible for any damage or breakages to the Goods caused by:**
- 10.2.1 after-trades;
 - 10.2.2 bad fixing practice;
 - 10.2.3 negligence or mishandling; or
 - 10.2.4 your own transport of collected Goods
- 10.3 **Please make sure that all roofing sub-structure is in an absolute level plain before tiling.**
- 10.4 **Installation. We will not recognise any claim unless you or your appointed installers strictly follow our specified installation procedures. See our website for information.**

11 General Warranties

- 11.1 Unless a separate warranty is given by us for specified Goods, we only warrant that the Goods will be free of apparent defects (keeping in mind the nature and colour variations in the Goods) and suitable for its intended purpose, but not that the Goods are suitable for any other purpose.
- 11.2 Claims arising from any warranty will only be recognised if written notice is given to us:
- within 10 days with regards to unsuitability, and
 - 6 months with regards to any defect becoming apparent except where specifically excluded in this agreement and in so far as permitted by the Consumer Protection Act 68 of 2008.
- 11.3 We do not warrant or represent that any advice given by of our employees of the Company is correct, and you rely on this advice at your own risk.
- 11.4 **We will not be responsible for any breach of warranty if we supply, free of charge, goods replacing those found to be defective. Our decision as to whether goods are defective or not, will be binding on all parties, unless you can prove that the defect was our fault.**
- 11.5 **We will not be liable to you for special, indirect or consequential damages including, but not limited to, loss of profits, unless otherwise stipulated in law.**
- 11.6 Our liability for breach of contract will not exceed in the total of:
- damages,
 - costs,
 - fees, and
 - expenses capable of being awarded to you,
 - the total price paid or due to be paid by you for the services rendered or
 - Goods supplied
- unless the breach of contract resulted in indirect damages as contemplated in S60 and S61 of the Consumer Protection Act 68 of 2008.
- 11.7 **All specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures, advertisements, brochures and other technical data we give you with the Goods, and whether in writing or not, will not form part of the contract or be relied upon by you for any purpose except as guideline.**
- 11.8 If any Goods or any part of them must be supplied according to specifications, measurements, or any other instruction you gave us, you will not have any claim of any nature whatsoever against us, our employees, agents, subcontractors or associates:-
- 11.8.1 for any loss or damage you sustained as a result of any error, discrepancy or defect in those specifications, measurements or other instructions; or
 - 11.8.2 a claim for refund or return if the Goods in question are not suitable for the purpose for which they are required.

12 Quality Standards

All our concrete roof tiles are made to South African National Standard (SANS) 542: Concrete roofing tiles. We have attained the SABS product mark in respect of this standard. The rest our products are made to the various local and international standards as stipulated in our product brochures.

13 Tests

If you want us to do any test to prove the performance levels of the Goods, or for any other purpose we will be entitled to make a reasonable charge for this.

14 Indirect damages excluded

- 14.1 We will not be responsible for any indirect, incidental, special, or consequential damages or losses arising from the Agreement, unless otherwise specified in law
- 14.2 This includes loss of profits, revenue, anticipated savings, business transactions, goodwill or other contracts. It is irrelevant if this is due to negligence (carelessness) or breach of contract.
- 14.3 This includes, any cause in connection with the Goods sold or the use, resale or other disposal of those Goods, or anything done or not done pursuant to this Agreement.
- 14.4 It does not matter whether such loss, expense, damage, injury or death results from breach of contract, delict, negligence or any other cause without limitation, an whether this contract is cancelled or not.
- 14.5 If you dispose of any of the Goods to a third party, or otherwise permit a third party to use any of the Goods, you must give us similar protection in your Agreement with them.

15 Reservation of ownership and cession as security

Until you have paid all amounts for this Agreement:

- 15.1 we will remain the owners of the Goods;
- 15.2 you agree to cede any claim which you may have relating to the Goods as security for payment.

16 Return of goods

16.1 We will not refund the Purchase Price for the Goods unless they are in a saleable condition and a manager at Marley Roofing has sanctioned it and we may charge you:

16.1.1 A maximum of 20% of the value of Goods returned. This charge covers the cost of sorting, packing, strapping and administration.

16.1.2 All transport costs we incurred in return of the Goods.

16.2 **Collection customers, who are returning Goods with the approval of a Marley manager, will be responsible for the off-loading of those Goods at our premises.**

17 Breach

If you breach any of your obligations to us, or

- become insolvent (bankrupt),
- have some legal disability, for example, if you are placed under administration;
- take steps to deregister yourself (close down) or is deregistered

We may, without any prejudice to any other remedies to which we may be entitled:

17.1 claim immediate payment from you of all amounts you owe us, whether due under this or any other contract, and whether then due and payable or not;

17.2 suspend the performance of any obligation owed by us;

17.3 cancel this agreement;

17.4 claim such damage as we may have suffered.

17.5 You also have the same rights as set out above in the event that we breach the Agreement.

18 General Terms

18.1 **Entire Agreement.** The Agreement is the entire agreement between the parties on the subject.

18.2 **Variation and cancellation.** No agreement varying, adding to, deleting from or cancelling this agreement must be effective unless reduced to writing and signed by or on behalf of the parties.

18.3 **Non-waiver.** Any favour we may allow you will not affect [or substitute] any of our rights against you.

18.4 **Legal costs if you default.**

- You must pay all legal costs, including attorney and client costs, collection, commission and tracing fees, incurred by us as a result of the breach your breach of this Agreement.
- You have the same right to claim above costs if we default in terms of this Agreement.

18.5 **Governing Law.** South African law governs this Agreement.

18.6 **Jurisdiction.**

- We will be entitled, but not obliged, to institute any proceedings arising out of or in connection with this agreement in any Magistrate's Court having jurisdiction over the matter, despite the facts that the proceedings may otherwise exceed the jurisdiction of that Court.
- You will have the same right to institute action against us in the above court.

18.7 **Cession and assignment.** We will be entitled to cede and assign its rights and obligations arising out of this contract without obtaining your consent.

18.8 **Future contracts.** In the absence of an express agreement to the contrary, these conditions must apply to all future contracts between you and us relating to the Goods.

19. Resolving disputes

The parties will handle any and all disputes in the following way:

19.1 **Notifying each other.** There will be a dispute about or from this Agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- **Negotiation (direct talks to try and agree how to end the dispute); failing which:**
- **Mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which**
- **Arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).**

19.2 **Negotiation.** Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

19.3 **Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.

19.4 **Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

19.5 **Periods.** The parties may agree in writing to change the periods for negotiation or mediation.

19.6 **Urgent interim relief.** This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

19.7 **Severability.** This clause is separate and divisible from the rest of this Agreement and remains effective even if the Agreement ends or is invalid.

19.8 **Consumer Protect Act dispute resolution channels.** Nothing in the above clause will preclude you from approaching the relevant court, tribunal or other dispute resolution body in terms of the Consumer Protection Act 68 of 2008.