Vanguard Waterproofing Systems Ltd

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Terms and Conditions of Sale: Commercial Customers only

The Customer's attention is drawn to clauses 42 to 53 which deal with liability

October 2026 Rev9

1. These terms and conditions apply to the Contract between Vanguard Waterproofing Systems Ltd (company number 12533066) whose registered office is at Castle Hill House, 12 Castle Hill, Windsor, Berkshire, SL4 1PD, Office number 01753 303458 (the Company) and the Customer named on the sales order (the **Contract**).
2. No additions, alterations, warranties or representations shall be incorporated within the Contract unless included on the face of the Contract signed by the Customer and the Company's representative.
3. The terms of the Contract do not affect the statutory rights of the Customer or Company.
4. Any alteration required to the Order after the Technical Survey shall constitute a separate contract.

Definitions

5. In the Contract we use the following definitions:
   Commencement Date: see clause 8
   Conditions: these terms and conditions which shall apply to the Contract.
   Goods: the goods to be supplied by the Company in order to provide the Roofing Works.
   Order: the Customer's order for the Supply of Goods and Roofing Works as set out on the sales order or the Customer's written acceptance of the Company's quotation as the case may be.
   Premises: the address specified in the Order.
   Roof: the roof at the Premises where the Roofing Work is to be carried out.
   Roofing Work: the installation services, including the erection and take down of any required scaffolding, supplied by the Company to the Customer in accordance with the Order.
6. In addition it is necessary to use some abbreviations and technical terminology. It is the Customer's responsibility to seek clarification if they are uncertain as to their meaning.

Basis of the Contract

7. The Order constitutes an offer by the Customer to purchase Goods and Roofing Works in accordance with these Conditions.
8. The Order shall only be deemed to be accepted when the deposit is paid and the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
9. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Roofing Works contained on the Company's website are issued or published for the sole purpose of giving an approximate idea of the services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
10. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
11. Any quotation given by the Company shall not constitute an offer, and is only valid until the date stated on it. Where no date is stated, it is valid for a period of 60 days from its date of issue.
12. All of these Conditions shall apply to the supply of both Goods and Roofing Works except where application to one or the other is specified.

Conditions to the Contract

13. The Contract is subject to receipt by the Company of a satisfactory technical report from the Company's Technical Surveyor and Local Authority planning and building regulation approval (where required). The Company's decision as to whether or not to proceed with the Contract shall be final and binding upon the Customer once this report has been assessed.

14. The Customer agrees to allow the Company access to the premises during normal working hours for technical survey purposes.

15. It is the responsibility of the Customer to obtain any planning and building control approvals (should they be required) as well as any written permission/approval from any owners of adjoining or shared roofs. Copies of such must be forwarded to the Company, prior to commencement of any Roofing Work.

16. If the Customer has indicated overleaf his intention of applying to a third party lender for a personal loan, the Contract shall be conditional upon the grant of that loan and, in the event of the loan not being granted for the sum that the Customer has applied for the Customer may cancel the Contract by written notice to the Company and the Company shall repay to the Customer any deposit paid, subject to deduction of a fee payable by the Customer to cover the Company's reasonable costs and expenses incurred before termination of the Contract.

17. Until the Customer has communicated to the Company the result of the personal loan application, the Company shall not be required to take any steps to fulfil its obligations under the Contract. If, as a consequence of representations made by the Customer, the Company carries out the work specified under the Contract, the Customer shall be liable to pay the full contract price to the Company.

18. Asbestos and all other materials classified as hazardous by the Health and Safety Executive will not be removed and disposed of by the Company, unless agreed and written into the agreement by an authorised representative of the Company. Such items remain the responsibility of the Customer and must be removed and disposed of in an appropriate manner.

19. It is the responsibility of the Customer to ensure the following:

    a. That no service supply or cables, whether telephone, electricity, television, gas, water or otherwise are present at the time of Roofing Work in the area of the Roof. The Company accepts no responsibility for damage to such supplies whether visible or not, known or unknown, at the time of Roofing Work. The Customer should note that service suppliers normally only accept instructions from the owner of the Premises.
    b. That a clear working area is provided to enable the Roofing Work to be carried out, including the removal of any telephone/television cable, burglar alarm contacts, flowers, plants, shrubs and trees.
    c. If the flat roof is adjoining the Customer's neighbours roof, written permissions have been granted and given by the neighbours and where required a Party Wall Agreement is in place.

The Goods and the Roofing Work

20. The Roofing Work will be carried out in accordance with the specification considered most suitable by the Company.

21. The Company strives to improve its products, installation methods and specifications and therefore reserves the right to vary design and/or specification without prior notice to the Customer, provided the Roofing Work is of an equivalent or better specification than that originally requested.

22. The delivery period commences from the date of obtaining consent and/or building regulation approval, where required, and once the Contract has been signed and the deposit paid. The Company will take every effort to maintain or improve upon the delivery period.

23. The delivery period quoted is that anticipated at the time of the order. The Company will contact the Customer as soon as possible to let the Customer know if the delivery period will be delayed for any reason. As long as the Company does this it will not be liable to the Customer for any compensation for delay. If the delay is likely to be substantial the Customer can terminate the Contract by contacting the Company. The Customer will receive a refund of the deposit or any additional sums paid to the Company for Goods and Roofing Work that have not been supplied less reasonable costs and expenses incurred by the Company before termination of the Contract.

24. The Company shall not be liable for any delay in the completion of the Roofing Work that arises from circumstances beyond its reasonable control. Time taken up by such delays will not count for the purpose of this clause.

25. If the Roofing Work is not completed within the anticipated delivery period the Customer may by notice in writing, require the Company to complete the work within a specified reasonable period. Normally the Company would accept 6 weeks as being reasonable.

26. If the Roofing Work is not completed within the extended period, the Customer may by service of written notice on the Company, cancel the uncompleted work covered by the Contract and terminate the rest of the Contract, after paying for any work that has already been completed.

27. The Customer hereby agrees to allow access to the Premises during normal working hours and free use of electricity and water to enable the Roofing Work to be carried out and completed. In situations where free power is not available or practical, a generator will be used.

28. The Roofing Work might not be completed in one day and will not necessarily be undertaken in one continuous visit.

29. Roof materials will be removed from site at no extra cost unless the Customer wishes them to remain, which should be indicated in writing on the order. Once removed from site they become property of the Company.

30. The Company will not be obliged to return to collect waste roof materials once the Customer has instructed the Company that they should remain.

31. All Goods remain the property of the Company until payment is received in full.

The Price and Payment

32. The Company's quotation is based upon the Roofing Works which are reasonably foreseeable at the time of quotation and does not include additional work subsequently carried out in order to overcome problems that were not apparent at the time, such as rotten, wet or perished roof decking, rotten roof timbers, inadequate roof fall, irregular levels, brickwork, damp courses, structural works, guttering, downpipes and soakaways etc.

33. The Customer will be notified as soon as practicable of any such unforeseen work and the Company will pass any agreed costs, due to such factors, on to the Customer.

34. All total measurements taken are rounded up to the nearest full square metre or linear metre for pricing purposes.

35. If as a result of Government legislation or any causes beyond the control of Company the cost of fulfilling the Contract by the Company is increased, such additional costs may be passed to the Customer in its entirety.

36. The Company will indicate the prevailing rate of VAT on the order but the rate of VAT applicable to the Contract will be that prevailing at the date of invoice.

37. Unless agreed otherwise in writing by the Company, the price is payable as follows:

    a. 25% deposit with Order
    b. 50% interim payment, due on technical survey or scaffold erection, whichever is sooner, or as otherwise agreed in writing (this is outlined within your Bill of Quantities)
    c. 25% balance payable on completion of the Roofing Work

38. The balance of the price shall be paid on completion of the Roofing Work. An invoice will be issued, and settlement shall be made on completion, by online payment, electronic bank transfer or cheque made payable to the Company.

39. When payment is not made in accordance with the Contract, the outstanding balance shall bear interest from the date when settlement was due, until such outstanding monies are paid, at the rate of 5% per annum above the base rate in force at the time of the Company's Bank.

40. Day Rates: In the event that the Roofing Work is held up through no fault of the Company and as a direct result of the Customer, the Company reserves the right to charge a day rate of £850 + VAT for a Team of two or £950 + VAT for a Team of three for each day of delay.

41. Retention is governed by the Company's Commercial Payment Terms. No retention applies unless agreed in writing before the Order is accepted.

Safety

42. If the Company supplies scaffolding, a certified Scaffolding Contractor will erect scaffolding in accordance with Health & Safety Guidelines as part of the Roofing Works. Scaffolding is provided to enable the installers from the Company to access the roof safely. The Customer, or others, must not use the scaffolding to access the roof at any time unless written permission is granted by the main contractor for the Premises. The scaffold must remain in use by the Company only. The Company accepts no liability for any damage or accidents that may occur if the Customer uses the scaffolding in breach of this clause.

Liability

43. All reasonable precautions will be taken to prevent water ingress, but the Company cannot be held responsible for any damage incurred due to circumstances beyond its control for the duration of the Roofing Work. To limit any damage, Customers must remove any moveable items of value from the areas affected by the scope of works, the Company will not be liable for any valuable items that remain and are damaged as a result of water ingress.

44. In the event of any faults occurring the Customer must keep costs incurred to a minimum, for example by refraining from carrying out any decoration or other works to the relevant area of the Premises until the faults have been corrected.

45. Unless the Company is made aware, the Company accepts no liability whatsoever for any breaches of any other regulations or requirements of the Local Authority, and shall not be required to provide any indemnity against or make any contributions towards, any action which may be brought by the Local Authority against the Customer.

46. The Customer agrees to inform the Company in writing of any claim for alleged damage done by the Company (howsoever arising) within the reasonable period of time (normally 7 days) of observation of its occurrence, in default of which the Company will accept no liability for such damage.

47. The Company shall not be liable to make good any damage arising from structural or other defects caused by subsidence, heave, landslip, severe storms or floods, or the discoloration of mastic lines.

48. The Company accepts no responsibility for the failure of timbers/original structures remaining at the Customer's request.

49. The Company will not be responsible for remedying any defect that existed in the Premises before the supply of the Roofing Work, or for any damage arising from such a defect, unless both Parties agree otherwise. The cost of such work will be additional to the price. This includes, but is not limited to, damage to the adjoining third party owned roof or damage caused by defects in an adjoining third party owned roof.

50. Where the Company agrees to undertake remedial work, it will reasonably endeavour to match new to existing brickwork/tiles/rendering etc, but cannot guarantee this. Where practically possible, the Company will always endeavour to minimise any cosmetic or superficial damage incurred during Roofing Work.

51. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

    a. death or personal injury caused by negligence;
    b. fraud or fraudulent misrepresentation;
    c. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
    d. defective products under the Consumer Protection Act 1987.

52. Subject to clause 51, the Company's total liability to the Customer shall not exceed the price paid under the Contract.

53. The following types of loss are wholly excluded:

    a. loss of profits;
    b. loss of sales or business;
    c. loss of agreements or contracts;
    d. loss of anticipated savings;
    e. loss of use or corruption of software, data or information;
    f. loss of or damage to goodwill; and
    g. indirect or consequential loss.

Roofing Work & Product Guarantees

54. The labour aspect of the Roofing Work is normally guaranteed by the Company for a period of 10 years with the following exceptions:

    a. Miscellaneous sundry items, which the Company shall supply to the Customer from time to time and which are ancillary to the main Roofing Work, shall be guaranteed for a period of 1 year, this includes but not limited to leaf guards. The Customer shall take reasonable steps (acting safely at all times) to inspect all ancillary products every 3 months during the guarantee period and if the Customer identifies any fault or damages the Customer should take photos (if possible to do so safely) and shall provide details and photographs to the Company.
    b. Gutters and downpipes shall be guaranteed against leakage and discoloration for a period of 1 year, unless otherwise stated by the manufacturer.
    c. Where the Roofing Work is underwritten by a manufacturer and or a separate insurance policy, in which case the term of the guarantee will be dictated by their terms.

55. The Company shall not be liable under the guarantee in clause 54 if:

    a. the defect arises because the Customer failed to follow any oral or written instructions provided by the Company in relation to the Roof or (if there are none) good trade practice regarding the same;
    b. the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
    c. the Customer alters or repairs the Roof without the written consent of the Company;
    d. the defect arises as a result of fair wear and tear, wilful damage, negligence, lack of maintenance, or abnormal conditions; or
    e. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

56. The product guarantees will in most cases be issued by the manufacturer and can be seen on request prior to any agreement being signed.

57. The Company shall not be obliged to act under the guarantee until the Company has received the balance of the purchase price. The Company will repair or replace any parts of the Roof, which, under normal and proper use, develop a fault due to defective materials or Roofing Work.

58. The Company cannot guarantee that some 'ponding' of water may or may not occur. This should not be considered as a defect and will not be detrimental to the performance of the waterproofing system.

59. The Company will respond within a reasonable time frame to any call out under the guarantee in place. If the problem is found not to be related to the roof, a charge will be made to cover any required labour and travelling time.

60. The Company's liability extends only to the unexpired part of the guarantee period.

Miscellaneous

61. Termination. The Company may terminate the Contract if the Customer:

    a. Fails to pay any payment to the Company when due or within 14 days of the Company reminder to the Customer to make payment; or

    b. The Customer does not, with a reasonable time of being requested to do so, provide the Company with any information, cooperation or access to the Premises that the Company requires in order to provide the Roofing Work.

62. Personal Data. The Company will use any personal data provided by the Customer in accordance with its Privacy Policy available on the Company's website or on request to the Company.

63. Notices. Any notice to be given to the Company under these terms and conditions shall be deemed to be validly served if sent by Recorded Delivery to the Company's address stated overleaf or such other address that the Customer shall supply to the Company in writing at any subsequent date.

64. Assignment and other dealings

    a. The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

    b. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

65. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 65 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

66. Waiver.

    a. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

    b. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

67. No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

68. Entire agreement.

    a. The Contract constitutes the entire agreement between the parties.

    b. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

69. Third party rights.

    a. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

    b. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

70. Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

71. Disputes. The Company's customer service team will do its best to resolve any problems that the Customer may have in accordance with the Company's Complaint Handling policy which is available on the Company's website or on request to the Company.

72. Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

73. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.