

# Standard Terms and Conditions of Baseline Waterproofing cc

Applicants applying for credit facilities must include the following source documents:

- Company/Close Corporation - CIPC Registration Docs
- Copies of ID of all Directors/Members/Sole Proprietors/Partners/Trustees
- VAT Registration Docs
- Bank Confirmation Letter (not older than 3 months) or Cancelled Cheque
- Letter of Authority – Authorised persons who's signatures may bind the applicant in any transaction with Baseline Waterproofing cc

## 1. INTRODUCTION

- 1.1 **Terms:** The terms set forth in this document and any Order ("the/these Terms") shall regulate the relationship between "**Baseline Waterproofing CC**", 2011/096540/23 a registered legal entity in terms of the laws of South Africa ("Baseline") and the legal entity to which Baseline supplies the Services ("Customer").
- 1.2 For these purposes "**services**" means any services described in an order placed by the Customer; "**order**" means a written order for Services placed by the Customer on Baseline which order shall be subject to these Terms; "**purchase consideration**" means the amounts described in the order.
- 1.3 **Acceptance or rejection.** Baseline may accept or reject any order.
- 1.4 **Binding agreement.** A valid and binding agreement between the parties on the terms shall come into existence at the time and place where Baseline accepts the relevant order. Each Order shall create a separate agreement. Notwithstanding the foregoing, the breach of any one such agreement shall, at Baseline's election, constitute a breach of any or all agreements.

## 2. QUOTATION.

- 2.1 All quotations will be valid for 30 working days from the date of the quotation.
- 2.2 All quotations exclude any unseen or hidden problems which may affect the quoted work to be undertaken.
- 2.3 Should any additional remedial repairs need to be undertaken that could not be seen prior to the work commencing, such as delaminated or loose plaster work, an additional quotation will be submitted.
- 2.4 If the Customer requires any additional work or alterations other than as specified in the quote, the Customer shall advise Baseline who shall provide the Customer with a new/additional quotation.
- 2.5 Work not specified in the quotation will be additionally quoted and charged for. Any variation to the quotation, whether in scope or detail, will be reduced to writing and signed by both parties.
- 2.6 Any rubble, debris and plant matter needs to be removed from the premises by the Customer unless it has been expressly quoted for.
- 2.7 Scaffolding costs are excluded unless specifically itemized on the quotation. Scaffolding required must be safe and properly erected at the areas required.

### 3. SALE

- 3.1 **Sale.** Baseline sells to the customer who purchases the services on these terms.
- 3.2 **Warranty of authority.** The customer warrants that the person who places the order on Baseline is duly authorized to place the order on behalf of the customer. The customer agrees to supply Baseline with purchase orders, job numbers, job addresses, and a current list of employees authorised to sign on completion of services rendered.
- 3.3 **Delivery.** Unless otherwise stated in the relevant order, the services shall be delivered by Baseline to the customer, at Baseline's cost. Every endeavor will be made to adhere to the quoted delivery dates but no liability can be accepted for the failure to do so. All such times and dates are to be accepted as estimates only, not involving any contractual obligations and are subject to Baseline not being delayed by instructions or lack of instructions from the customer. Baseline accepts no responsibility for any loss or damage incurred by the customer on account of any delay arising from any causes whatsoever, whether beyond the control of Baseline or not. The customer shall accept delivery when it is tendered and shall not be entitled to resile from the order on account of delay in delivery. Delivery shall be deemed to have taken place against delivery of Baseline's certificate of completion.
- 3.4 **Alternate Goods.** Baseline, in its sole discretion, may substitute for any goods specified in this agreement such other goods which Baseline may deem suitable substitutes. The specifications pertaining to the goods may be altered as conditions warrant without notice by Baseline. Should for whatever reason any material or goods specified in this agreement become unavailable, Baseline may substitute same with any suitable alternates to enable it to perform its obligations.
- 3.5 **Minimum lead time.** Work will commence between 7 - 10 working days from the date the deposit is cleared through Baseline's bank account.
- 3.6 **Site Requirements:**
  - 3.6.1 Normal site facilities such as water, electricity, latrines and adequate storage area for materials, tools and equipment shall be provided and accessible unless specifically excluded and priced for.
  - 3.6.2 Access to the site shall be free and unimpeded and any security checks required on our personnel prior to entry must be specifically addressed at the time of the quotation.
  - 3.6.3 Any hidden services such as electrical cables, electrical and water pipes and security/alarm wiring are to be specifically pointed out if there is any possibility of damage to these, and necessary precautions should be taken.
  - 3.6.4 Whilst the utmost care will be taken to protect your property, we recommend that the customer removes or covers all furniture, drapes, floor coverings such as loose carpets and rugs, and personal effects from the work area.
  - 3.6.5 Any vegetation that may be hindering any part of the work must be cut-back, trimmed or removed by the customer to allow free access to any surface to be waterproofed prior to commencement of work unless specifically priced and quoted on by Baseline.
  - 3.6.6 Timeous access to site to be made available by the client at all times for the completion of the contract. Work stoppages on site attributable to others will be charged for at daily work rates.

- 3.7 **Title.** Ownership in the Services shall only pass to the customer upon the payment in full of the purchase consideration as well as the performances of any other obligations in favor of Baseline arising from any cause of whatsoever nature. Providing a negotiable instrument does not constitute payment.
- 3.8 **Risk.** All risk of loss or damage to the services shall pass to the Customer upon physical completion of the services to customer's premises or nominated addresses.
- 3.9 **Damage to Services.** Unless Baseline is advised in writing within 3 (three) working days of delivery of the Services of any alleged damage to said services, it is deemed that the customer has accepted the Services as is and Baseline shall not be liable for any claims instituted by the Customer in this regard.
- 3.10 **Cancellation.** Should Baseline agree to the cancellation of any order, such agreement shall be conditional upon the customer promptly paying the cancellation fee and other charges stipulated by Baseline. A certificate signed by a member of Baseline whose appointment it shall not be necessary to prove, shall be *prima facie* proof of the amount owed.

#### 4. PAYMENT

- 4.1 **Purchase Consideration.** The customer agrees to full payment on presentation of Baseline's purchase consideration invoice. If credit facilities are granted by Baseline to the customer, the customer shall pay the purchase consideration strictly on the last working day of the month following the date on Baseline's statement for that month. Payment of the purchase consideration shall be made without set-off, withholding or deduction of any nature in South African Rand and as stipulated by Baseline from time to time. Baseline may appropriate any payments made by or on behalf of the customer to any indebtedness of whatsoever nature of Customer. Any price or Purchase Consideration quoted by Baseline prior to Baseline accepting the order are subject to changes in the applicable exchange rate.
- 4.2 **Deposit on Order.** The customer acknowledges that Baseline shall have the discretion to request a payment of 75% of the value of any order on the confirmation thereof. Should the customer fail to effect payment thereof Baseline shall not be obliged to commence any work on the order. Payment of any order or balance shall be paid in accordance with the terms of payment stipulated in 4.1 above, alternatively as stated on any quotation and failing any such stipulation, on collection or delivery of the order. Failure to pay shall relieve Baseline from making further deliveries without prejudice to its entitlement to claim against the customer for any loss or damage sustained in consequence of non – completion of contract.
- 4.3 **Third Party Agreements.** The Customer acknowledges that all transaction entered into with Baseline is not subject to their agreements with their customers and Baseline will not be disadvantaged in terms of payment due to the customer defaulting on their agreed payment arrangements with the customer.
- 4.4 **Change in Prices.** Prices are subject to variation at the instance of Baseline at any time prior to the delivery of the Services. Baseline shall inform the Customer of any such increases in writing. The customer shall be entitled to cancel the Order in question by giving written notice to that effect to Baseline within 7 (seven) Days after the date of receipt of notice of the price increase, failing which the customer shall be deemed to have agreed to such increase and shall be bound by the terms and conditions of sale in respect of the Services and subject to the price increase.

- 4.5 **Taxes.** Unless specifically stated, the purchase consideration excludes any and all taxes (including value added tax), duties, tariffs and/or levies. Customer shall pay all taxes, duties, tariffs and/or levies in respect of these terms on demand to Baseline.
- 4.6 **Interest.** In the event of late payment, Baseline shall be entitled to recover from the customer interest from the due date of payment until the date of payment is made at a rate equivalent to the maximum rate provided for within the National Credit Act 2005 (Act 34 of 2005).
- 4.7 **Credit.** The Customer consents to Baseline making enquiries about its credit record with any credit reference agency and any other party. Baseline may also provide credit reference agencies with regular updates, including how the customer manages its accounts.
- 4.8 **Restriction of Customer's rights.** Until the services are fully paid for by the customer, the customer shall be obliged to take whatever steps may be necessary to prevent the destruction or loss of the services, including without limitation insuring the services (and indicating Baseline as an additional insured) and customer shall not sell, cede, assign, transfer or pledge the services or allow them to become subject to any lien of whatsoever nature or deliver possession to any other person.
- 4.9 The Customer shall be obliged to collaborate with Baseline measures it intends to take in order to protect its proprietary rights in the services. If third parties try to assert or substantiate their rights to any Services which Baseline still owns, the customer shall be obliged to inform Baseline of any such action immediately.
- 4.10 **Late payment.** The Customer hereby acknowledges that should any amount not be paid on due date, the full amount owing by the Customer to Baseline, shall immediately become due and payable and Baseline shall be entitled to demand immediate payment, notwithstanding that any amount may, as at the date, not yet being due. The Customer further agrees that in the event of its default in any way, Baseline shall be entitled to place an order for the supply of services on "stop supply" without any notice, notwithstanding that the customer may have placed an order for the supply of services prior to the stop supply date.
- 4.11 **Failure to pay.** Should the customer fail to pay the payment consideration within 14 (fourteen) days after demand, Baseline shall have the option to cancel the sale and repossess the services in lieu of payment or the balance thereof and the customer shall forfeit any amount paid on account. Should Baseline be able to resell the services, the customer will be given a credit for all the amounts received in excess of the expenses of the recovery and resale. Baseline is similarly entitled to cancel the agreement in the event that the customer:
- 4.11.1 commits any act of insolvency, or being a natural person, assigns,
  - 4.11.2 surrenders or attempts to assign or surrender his estate; or
  - 4.11.3 allows a default judgment to remain unsatisfied for a period of 7 days or be refused rescission within 14 days of any default judgment; or
  - 4.11.4 is sequestrated or wound up, whether provisionally or finally; or
  - 4.11.5 makes a compromise with any of its creditor/s or endeavors to attempt to do so.
  - 4.11.6 In the event that the customer is placed under "business rescue", this agreement shall be deemed to be cancelled by the customer immediately prior to the customer being placed under business rescue and in which event the customer consents to the unpaid services being returned to Baseline.

- 4.12 **Discount.** Should Baseline at any time agree to any discount of its prices, it shall be conditional of such discount that it falls away if payment of the purchase consideration is not made strictly on due date.
- 4.13 **Credit Limits.** Credit limits granted by Baseline may not be exceeded without Baseline's written prior approval but should the customer, for whatsoever reason, exceed such credit limit, it shall notwithstanding, be liable for the full amount and not under any circumstances be limited to the amount of the credit limit.

## 5. WARRANTY

- 5.1 **Warranty.** All warranties for products used in the waterproofing process or repairs are regulated by the manufacturer's terms and conditions. Baseline warrants that under proper use and maintenance no defects shall arise during the warranty period.
- 5.2 Any recommendations or advice by Baseline is by way of general advice only.
- 5.3 Areas which have been waterproofed and worked on may have to be repainted.
- 5.4 No painting of exterior walls or color matching to be carried out by Baseline.
- 5.5 No warranty will be given on rusted or cracked areas.
- 5.6 Polysulphide sealants carry a 36 month warranty and may need to be re-applied onto the area every 36 months.
- 5.7 All silicone products carry a 12 month warranty and may need to be re-applied onto the area every 12 months.
- 5.8 All our waterproofing is backed by a manufacturer's warranty as well as an applicators' warranty. Torch on waterproofing carries a 10 year warranty and all liquid based waterproofing carries a 5 year warranty.
- 5.9 All bituminous aluminum painted areas, counter flashing, acrylic waterproofing, cementitious waterproofing, rubberized bitumen painted areas and torch on waterproofing requires an inspection every 2 years. Once the inspection is completed, maintenance repairs and or coating may be required to ensure that the warranty remains valid. Maintenance repairs will be for the cost of the Customer
- 5.10 Silver maintenance protective coatings to be applied on serviced areas every 2 - 3 years to ensure the warranty remains valid. Maintenance repairs will be for the cost of the Customer
- 5.11 Any alterations or maintenance not performed by Baseline or any damages to the waterproofing by any third party voids the warranty.
- 5.12 Any structural cracks or movement in the slabs and or boarded areas resulting in the waterproofing being damaged is not covered by the warranty. All repairs will be carried out at the expense of the customer.
- 5.13 Only repairs undertaken will be covered in the warranty and no additional and/or surrounding areas.
- 5.14 Baseline shall provide the necessary contractors all risk and public liability insurance on any new site but only to the extent and of their contract value, the main and other contractors shall be responsible to insure their works.

## 6. LIABILITY

- 6.1 To the extent permitted by the applicable law, the liability of Baseline (and its directors, employees, agents, consultants, contractors or other representatives) to the Customer for any damages howsoever arising shall be limited to the purchase consideration actually paid hereunder in respect of the services which gave rise to the liability in question and save as otherwise provided for in these terms, neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to these terms, whether resulting from negligence, breach or any other cause.
- 6.2 Under no circumstances shall Baseline be liable to the customer for any losses of whatsoever nature including but limited to loss of profits or any other indirect consequential damages suffered by the Customer and arising either directly or indirectly from any defective services. To the extent that Baseline may be liable for damages sustained by any third parties, the Customer does hereby provide Baseline with a full indemnity in relation to such damages.

## 7. ADMISSIBILITY OF DATA MESSAGES

- 7.1 **Principle.** The parties agree that they may conclude binding agreements by means of data messages. The parties hereby agree that:-
- 7.1.1 A requirement in these terms that a notice, order or document be in writing shall be satisfied if the document or information is –
- 7.1.1.1 in the form of a data Message, and
- 7.1.1.2 accessible in a manner usable for subsequent reference (including without limitation, a hard copy printout of the information concerned).
- 7.1.2 Data or data messages shall not be denied legal effect, validity or enforceability solely on the grounds that same are wholly and partly in electronic form;
- 7.1.3 Data shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in such data message;
- 7.1.4 No data shall be deemed to be incorporated into a data message unless such data is:
- 7.1.4.1 referred to in a way in which a reasonable person would have noticed the reference and incorporation of such data; and
- 7.1.4.2 such data is made accessible to the other party in a form in which it may be read, stored and retrieved by the other party on request.
- 7.2 **Definitions.** For these purposes a “Data Message” means any information generated, sent received or stored by electronic means and includes, without limitation electronic mail and records and a “record” means any information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

## 8. NOTICES AND DOMICILIUM

8.1 The customer choose as their *domicilium citandi et executandi* (“Domicilium”) for all purposes their address as stated in the credit application form or if no credit facilities with Baseline exist, then on the Customer’s official order. Either party may change its domicilium by giving written notice to the other. Any notice to a party’s domicilium shall be in writing, provided that an electronic notification shall be regard as being in writing, and shall be deemed to have been received on the 7<sup>th</sup> day after the date of dispatch, if sent by prepaid registered post, or on the date of delivery or transmission if delivered by hand, transmitted by facsimile or by electronic transmission.

## 9. FORCE MAJEURE

9.1 Neither party hereto shall have any liability by reason of failure to fulfill any obligations in terms of these terms if such failure is occasioned by force majeure including, but not limited to, events such as acts of nature, fire, accident, government act, explosion, industrial dispute or any other act, omission or event beyond the reasonable control of such party.

## 10. GENERAL

10.1 These terms constitute the sole terms applicable to the supply of the services by Baseline’s pursuant to these terms and no terms sought to be imposed by the customer shall be of any force or effect.

10.2 **Interpretation.** If there is a conflict in meaning between these terms and any order or any other correspondence relating to any order then the meaning of these terms shall prevail, unless expressly provided otherwise. The clause and sub-clause headings to these terms are intended for convenience only and shall not affect the construction or interpretation of these terms.

10.3 **Variation.** No amendment or modification to these terms shall be effective unless in writing and signed by authorized signatories of both Baseline and the customer.

10.4 **Waiver.** No relaxation or indulgence granted or given by Baseline to the customer or failure by Baseline to exercise any right shall be deemed to be a waiver of any of Baseline’s rights in terms of these terms and such relaxation or indulgence shall not be deemed to be novation of any of these terms.

10.5 **Applicable Law.** These terms shall be governed and construed according to the laws of the Republic of South Africa. The customer hereby consents and submits to the jurisdiction of the Magistrate’s Court having jurisdiction in respect of all proceedings in connection with these terms, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction. In any event Baseline shall be entitled, at its option, to institute any proceedings in connection with these terms against the customer in any other court of competent jurisdiction.

10.6 **Costs.** All costs and disbursements (including without limitation, legal costs on the attorney and own customer scale including collection charges and tracing agent’s fees and valuation costs) incurred by Baseline as a result of or relating to customer failing to comply with its obligations in terms of these terms shall be for the account of customer and are payable on demand.

**I acknowledge having read the above terms and conditions and without limiting the generality thereof, agree to be bound by all such terms and conditions I further acknowledge that I am duly authorised to sign and bind the customer in all future liabilities, agreements and contracts with Baseline Waterproofing CC**

For and on Behalf of

(Customer's Full Name) : \_\_\_\_\_

(Address of Customer) : \_\_\_\_\_

\_\_\_\_\_

**Authorised Signatory**

\_\_\_\_\_

Full name

\_\_\_\_\_

I.D Number

Signed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**WITNESS:**

\_\_\_\_\_

Full Name

\_\_\_\_\_

I.D Number

**Authorised Signatory of witness**

Signed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.