

**TERMS AND CONDITIONS OF TRADE
CIVIL AND LAND CONSTRUCTION LIMITED**

1. Terms and Conditions of Trade

- 1.1. These Terms govern the provision of Services from Civil and Land Construction Limited (“**we/us**”) to the customer(s) (“**you**”) and comprise our contract with you. If there is more than one customer your liability under these Terms is joint and several.
- 1.2. Whether or not you have acknowledged these Terms in writing, the acceptance of Services provided by us is deemed to be acceptance of these Terms.
- 1.3. Any variation of these Terms is only effective if it is agreed in writing and signed by our authorised representative.

2. Definitions

- 2.1. **Price** means the price for the Services, Materials and Other Costs plus GST (if any), as subject to clause 4 of these Terms.
- 2.2. **Materials** means the materials (other than equipment) used by us to provide the Services.
- 2.3. **Property** means the property, premises, site or location where the Services are to be provided.
- 2.4. **Project Rates** means any rates set in our quotes or tenders.
- 2.5. **Other Costs** means subcontractors fees, products or services from contractors, and hireage of tools, plant, equipment, appliances or vehicles.
- 2.6. **Services** means all services supplied by us to you, including civil construction, drainage, demolition and roading, advice on the same, and supply of Materials.
- 2.7. **Terms** means the terms and conditions contained within this document.

3. Your Responsibilities

- 3.1. You warrant that you own the Property or are authorised by the owner of the Property to agree to these Terms.
- 3.2. You agree it is your sole responsibility to obtain all necessary regulatory permissions and consents relating to the Services at the Property.
- 3.3. You are required to provide us with at least 14 days’ notice of any material change in your details, including your name and address.
- 3.4. You will provide us with free and uninterrupted access to the Property to complete the Services.
- 3.5. The Property is at your risk during provision of the Services. You must obtain any contract works insurance and/or any other relevant insurance necessary for the Property during completion of the Services.

4. Price

- 4.1. As determined by us, the Price shall be either:
 - 4.1.1. In accordance with our Project Rates provided prior to commencing the Services.

- 4.1.2. Our quoted Price, provided the quotation is accepted in writing within the expiry date prescribed on it. However:
 - 4.1.2.1. The quoted Price is subject to any variation of the Services or Materials to be provided following provision of the quotation.
 - 4.1.2.2. If we are required to provide any Services and/or Materials that are not covered by the quoted Price or a subsequent variation, the additional Services will be charged at the hourly rate charged by us at the time they are performed, and the additional Materials will be charged at the cost to us plus a margin of 15%.
- 4.1.3. If neither Project Rates nor a quoted Price apply, as indicated on invoices provided by us to you in respect of Services supplied.

5. Payment

- 5.1. We will invoice you for the Price either:
 - 5.1.1. on completion of the Services; or
 - 5.1.2. at regular intervals as notified by us to you, but to be no more frequent than once every 4 weeks.
- 5.2. We may require you to pay a deposit for an amount up to 50% of the quoted Price prior to commencing the Services.
- 5.3. You must pay our invoice in full, without deduction or setoff, either:
 - 5.3.1. by the date as set out on our invoice; or
 - 5.3.2. if no date is set out on our invoice, by the twentieth (20th) day of the month following the date of the invoice.

(the **due date**).

6. Default

- 6.1. If payment is not made in full by the due date, then without prejudice to any other rights or remedies available to us we may:
 - 6.1.1. charge interest on the outstanding amount at 24% per annum (calculated daily) until payment is made in full; and
 - 6.1.2. charge you all costs (including legal costs on a solicitor/own client basis) incurred in recovering payment.

7. Construction Contracts Act 2002

- 7.1. Our agreement constitutes a construction contract under the Construction Contracts Act 2002 (or subsequent revisions/amendments) (the **Construction Contracts Act**).
- 7.2. Invoices issued by us may constitute payment claims under the Construction Contracts Act.
- 7.3. Any payment schedule provided by you under Construction Contracts Act disputing any payment claim (or part thereof) must be provided to us within seven (7) days following the date of receipt of the relevant payment claim.

- 7.4. We have the right to suspend work by the provision of not less than five (5) working days written notice of our intent to do so where a payment claim is served on you and:
 - 7.4.1. the payment claim is not paid in full and no payment schedule has been issued by you within the required timeframe; or
 - 7.4.2. or a scheduled amount stated in a payment schedule issued by you is not paid in full by the due date for payment; or
 - 7.4.3. you have not complied with an adjudicator's notice that you must pay an amount to us by a particular date.
- 7.5. If we suspend work under clause 7.4:
 - 7.5.1. we are not in breach of contract;
 - 7.5.2. we are not liable to you for any loss or damage suffered, alleged to be suffered, by you or any person claiming through you;
 - 7.5.3. we are entitled to an extension of time to complete the contract;
 - 7.5.4. we retain all our rights under these Terms, including the right to terminate the contract with you; and
 - 7.5.5. we may at any time lift the suspension, even if the amount has not been paid of an adjudicator's determination has not been complied with.
 - 7.5.6. This does not affect any rights otherwise available to us under the Contract and Commercial Law Act 2017, or entitle you to exercise any rights that would otherwise have been available to you under that act as a direct consequence of the suspension.

8. Exclusions and Limitation of liability

- 8.1. To the maximum extent permitted by law, we make no warranties and representations to you (including but not limited to the description, quality, suitability, or fitness for purpose of the Services or Materials) and any liability we may have to you arising under or in connection with this agreement (whether in contract, tort, or equity) is excluded.
- 8.2. To the extent that any liability we may have to you is not able to be excluded by contract, you acknowledge that our total liability is limited to the Price.
- 8.3. We are not liable to any errors or mistakes in either the size, shape, or volume of Materials supplied that are supplied based on measurements provided by you.
- 8.4. Nothing in these Terms is intended to limit our obligations under the Consumer Guarantees Act 1993.
- 8.5. If you are acquiring our Services for trade or business, then you agree that the Consumer Guarantees Act 1993 does not apply.

9. Health and Safety

- 9.1. All parties to these Terms will observe and practice the health and safety requirements under the Health and Safety at Work Act 2015. In doing so the parties will consult and co-operate with each other and any other relevant parties.
- 9.2. Without limiting clause 9.1, you must:

- 9.2.1. notify us of any hazards or risks on the Property prior to us entering the Property;
- 9.2.2. not interrupt or interfere with any Materials, or machinery stored by us at the Property; and
- 9.2.3. follow (and instruct any other person to whom you provide access to the Property) all our reasonable instructions in relation to health and safety at the Property at all times when we are providing Services at the Property and/or are storing Materials or Machinery at the Property.

10. Disputes

- 10.1. A party claiming that a dispute has arisen in relation to any Services must notify the other party to the dispute, in writing, giving full details of the dispute and their proposal(s) for its resolution.
- 10.2. In the thirty (30) day period after the day that the dispute is notified, the parties will use their best efforts to resolve the dispute quickly, efficiently and in good faith.
- 10.3. If at the end of the thirty (30) day period the parties have not been able to resolve the dispute between themselves then we may appoint a third party to act as an Arbitrator and refer the dispute to Arbitration conducted in accordance with the Arbitration Act 1996.
- 10.4. Nothing in clause 10 affects the application of the Construction Contracts Act.

11. General Terms

- 11.1. **Amendment:** We may review and amend these Terms at any time by notice to you in writing.
- 11.2. **Force Majeure:** We are not liable if we cannot perform the Services due to an act of god, or any other reason beyond our reasonable control (including but not limited to legislative governmental or other prohibitions or restrictions, natural disasters, a shortage or unavailability of labour or materials, fires, floods, or COVID restrictions).
- 11.3. **Governing Law and Jurisdiction:** New Zealand law will apply, and New Zealand courts will have jurisdiction in relation to these Terms, and any claims arising out of any agreement between you and us.
- 11.4. **No Waiver:** Any delay of failure by us in exercising any right under these Terms will not operate as a waiver of that right.
- 11.5. **No assignment:** You may not assign these Terms to any person or entity without our written consent.
- 11.6. **Severability:** If a court decides that any part of these Terms is unenforceable, the Terms will only be unenforceable in respect of that part and the remainder of the Terms will continue to apply.

12. Intellectual Property

- 12.1. Where we have prepared designs or drawings for you, then the copyright in those designs and drawings shall remain vested in us, and shall only be used by you at our discretion.
- 12.2. You warrant that all designs or instructions to us for preparation of the same will not cause us to infringe any patent, registered design or trademark.