

Central Otago District Council Terms of Trade



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BACKGROUND

- 1.1 Please read these Terms of Trade carefully. By requesting Work from the Authority, the Customer accepts and agrees to be bound by these Terms of Trade.
- 1.2 **IMPORTANT:** These Terms of Trade, and any invoice, order, application or request form, or any other document or statement issued by the Authority constitutes the full agreement between the Customer and the Authority.

DEFINITIONS

- 2.1 The following terms used in this document have the corresponding meanings:
 - the Authority:** means the party identified as such on the Request and includes its employees, contractors and agents.
 - Charges:** includes all charges and fees owing to the Authority in connection with the Work (including any Goods and Services Tax or other payments required as a result of the Work), which may be specified from time to time at the offices or website of the Authority.
 - Customer:** means the party identified as such on the Request form.
 - Request:** means the Customer's request for goods or services from the Authority attached to these Terms of Trade and signed by the Customer.
 - Work:** means any goods or services provided by the Authority to the Customer, including any certificate, consent, permit or report applied for under the Resource Management Act 1991, the Building Act 2004 or any other statute or regulation.

VARIATION OF THESE TERMS

- 3.1 The Authority may, with the written agreement of the Customer, vary these Terms of Trade in whole or part from time to time.
- 3.2 Any variation of these Terms of Trade will be incorporated into an agreement with the Customer relating to any Request placed with the Authority from the date the varied terms come into effect.

PAYMENTS

- 4.1 If the Customer is applying for any type of consent, approval or certificate under the Resource Management Act 1991 or Building Act 2004, no such consent, approval or certificate will be issued until the Customer has paid all Charges owing to the Authority in full or has been approved for credit by the Authority.
- 4.2 The Authority may require prepayment or the payment of a deposit by the Customer, as it deems necessary, before commencing or continuing any Work. The amount required for any such deposit will be at the discretion of the Authority.
- 4.3 All other Charges payable to the Authority must be made in full and without deduction within 30 days following the date of the invoice.
- 4.4 The Authority may issue interim invoices in cases where performance of the Work extends beyond one month. The Customer agrees to pay these in the same manner as set out in clause 4.3 above.

- 4.5 If payment of all Charges payable by the Customer are not received in full by their due date:
 - (a) the Authority may choose to cease performing or delivering the Work until such time as any outstanding amounts are paid in full; and
 - (b) interest will accrue on that part of the Charges unpaid at a rate of 18% per annum on the unpaid Charges; and
 - (c) the Customer will also be liable for the costs incurred by the Authority in the collection of any unpaid Charges including legal costs as between solicitor and client and any debt collection costs, (including any commission payable to any collection agency retained by the Authority for such purpose).
- 4.6 In such case (and except where the law requires otherwise) the Customer agrees that any payments received by the Authority from the Customer will be allocated:
 - (a) first, in payment of costs incurred by the Authority in relation to the Work pursuant to clause 4.5(c);
 - (b) secondly, in payment of any interest accrued pursuant to clause 4.5(b); and
 - (c) thirdly, in payment of unpaid Charges.
- 4.7 The Customer agrees that all sums which the Authority may owe the Customer on any account whatsoever may, at the Authority's option, be set off against payments due by the Customer to the Authority, to the maximum extent permitted by law.
- 4.8 If the Customer, at any time, makes a payment to the Authority that exceeds the amount of Charges, interest or debt collection costs owing, the Customer agrees that the Authority may apply any such surplus to any other unpaid amount or account owed to the Authority by the Customer in connection with any other matter whatsoever.

THE CUSTOMER'S OBLIGATIONS

- 5.1 The Customer warrants that all details provided to the Authority are true and correct.
- 5.2 The Authority may request additional information regarding any Request and the Customer agrees to provide the Authority with such information on request.
- 5.3 If at any time the Customer provides incorrect or misleading information to the Authority then the Authority may:
 - (a) cease undertaking the Work and terminate its agreement with the Customer; and
 - (b) demand immediate payment of all Charges incurred to the point of termination.
- 5.4 The Customer warrants that he/she/it has full legal capacity to agree to and enter into these Terms as a binding legal contract and where signing as an agent on behalf of the Customer, that the agent has authority to do so on behalf of the Customer.
- 5.5 The Customer agrees to indemnify the Authority for any costs, damages, losses or expenses suffered by the Authority (whether directly or indirectly) as the result of any incorrect information provided by the Customer to the Authority.

5.6 In addition to the indemnity contained in the above clause, and to the maximum extent permitted by law, the Customer agrees to indemnify the Authority in respect of any reasonably foreseeable costs (including legal or settlement costs) damages, losses or expenses that the Authority may incur, suffer or become liable for as a result of:

- (a) Any breach by the Customer of any of these Terms of Trade or other terms applying to the provision of Work to the Customer;
- (b) any negligence by the Customer; or
- (c) any claim brought by a third party against the Authority arising in connection with the above.

5.7 Nothing in these terms limits any rights or remedies that the Authority may have under statute or law.

5.8 The Customer agrees that the Authority may, at any time, require such personal guarantees as it deems necessary before commencing or continuing to perform or deliver the Work (in addition to any guarantees attached to these Terms of Trade) and may discontinue the Work until provided with those guarantees.

THE AUTHORITY'S OBLIGATIONS

- 6.1 The Authority will make all reasonable efforts to complete the Work, but does not warrant that the goods or services necessary to complete the Work will necessarily be available.
- 6.2 Other than where the law requires, if the Authority cannot fulfil a Request, the Authority will advise the Customer as soon as possible and may refund the Customer any money paid for the Work, at the discretion of the Authority.
- 6.3 The Authority is not bound by any error or omission on any invoice, order or application form, or other document or statement it issues.
- 6.4 The Authority will make all reasonable efforts to ensure that the descriptions of goods and services, and the prices shown in its publications, are accurate and up to date.
- 6.5 Notwithstanding the above clause, the Authority reserves the right to adjust the actual price charged if the prices shown are incorrect, and the right to vary its prices and product descriptions at any time, subject to any requirement of section 150 of the Local Government Act 2002.
- 6.6 The Authority will deliver the Work requested by the Customer in person or to an address specified by the Customer within New Zealand, in accordance with any specific terms Authority has or specifies in relation to that delivery.

RETENTION OF TITLE AND SECURITY

- 7.1 Where the Work includes supplying goods, title to such goods is retained by the Authority until it has received full payment for those goods. However, all risk of loss of, or damage to, the goods passes to the Customer on delivery of the goods. The Customer agrees that this clause creates a security interest in such goods under the Personal Property Security Act 1999 ("PPSA") and that the Authority will be entitled to register a financing statement in respect of such goods.
- 7.2 The Customer agrees that all amounts payable by the Customer to the Authority in respect of the Work will be secured by a charge (to the extent necessary to create a Security Interest under the PPSA) over all of the Customer's present and future assets under the terms of the version of the General Security Agreement published by the Auckland District Law Society as at the date of this agreement (the terms of which are implied herein).
- 7.3 The Customer agrees that:
 - (a) nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms of Trade, or any security under the same;

- (b) it waives its rights under section s 121, 125, 129, 131 and 132 of the PPSA; and
- (c) it waives the right to receive a copy of the verification statement confirming registration of any financing statement or financing change statement relating to any security interest registered pursuant to this clause.

LIMITATION OF LIABILITY

- 8.1 Subject to any statutory requirement to provide the Work within a specified time:
 - (a) any time stated for delivery of goods or supply of services stated by the Authority is approximate only;
 - (b) the Authority is not liable for failure to fulfil any Request by or at such time on any grounds whatsoever (including negligence); and
 - (c) the Authority is not liable for any failure to fulfil any Request where such failure is caused by circumstances beyond its reasonable control.
- 8.2 To the maximum extent permitted by law, all warranties, conditions, guarantees, representations or descriptions, and any conditions as to fitness or suitability for any purpose, merchantability, tolerance to any conditions or otherwise, whether made expressly or implied by law, trade custom or otherwise, are expressly excluded.
- 8.3 The Customer agrees that, where a Request is made for business purposes, the Consumer Guarantees Act 1993 does not apply to the Work.
- 8.4 The Customer agrees that, where the Consumer Guarantees Act 1993 does apply, to the maximum extent permitted by law, the Authority's liability for breach of any implied warranty or conditions which cannot be excluded is limited, at the Authority's option, to:
 - (a) supplying the Work again; or
 - (b) replacing the Work; or
 - (c) supplying equivalent Work; or
 - (d) where the Work consists of goods, repairing such goods; or
 - (e) paying the cost of the above.
- 8.5 To the maximum extent allowed by law, the Authority is not liable to the Customer for any type of loss or damage suffered by the Customer or any other person as a result of any failure or delay in providing the Work.
- 8.6 To the maximum extent allowed by law, the Authority's liability in contract, tort, or in any other way concerning claims for loss, damage or injury which arise directly or indirectly from the Work, shall not exceed the aggregate price paid or payable by the Customer for the Work in relation to which the loss or damage occurred.

NOTICES

- 9.1 The Authority may give notice to the Customer for any matter in relation to the Work by way of:
 - (a) personal delivery;
 - (b) post;
 - (c) email; or
 - (d) short message service (SMS)to any of the communication points specified by the Customer in the Request.
- 9.2 Any notice given by the Authority will be deemed to have been served at the following times:
 - (a) when given personally, on delivery to either the Customer or its contact person;
 - (b) when sent by post, 3 business days after (but exclusive of) posting;
 - (c) when sent by email or SMS, at the time of sending (provided that the Authority must retain evidence that this has occurred).

GENERAL

- 10.1 The Customer agrees that these Terms of Trade are governed and shall be construed in accordance with the law of New Zealand.
- 10.2 No waiver or variation of these Terms of Trade by the Authority will be effective unless agreed to in writing by the Authority.
- 10.3 No waiver or failure to act by the Authority in respect of any breach of these Terms of Trade by the Customer shall operate as a waiver of the Authority's rights in relation to any other breach. The Authority will not be liable for any delay or failure to perform its obligations under these Terms of Trade where such delay or failure has arisen as the result of any event or circumstances beyond the Authority's control.
- 10.4 If any provision of these Terms of Trade is or becomes unenforceable, illegal or invalid for any reason it will be deemed to be severed from Terms of Trade without affecting the validity of the remainder of these Terms of Trade and will not affect the enforceability, legality, validity or application of any other provision of these Terms of Trade.