

Vernon Developments Ltd - Terms and Conditions of Trade

1. DEFINITIONS
- 1.1 "Contractor" shall mean Vernon Developments Ltd and its successors and assigns.
- 1.2 "Customer" shall mean the Buyer of the Goods and Services from the Contractor and any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the buyer on a principal debtor basis.
- 1.4 "Goods" are as defined in the Contract and Commercial Law Act 2017 Part 3 Subparts 1-6 and are the goods supplied by the Contractor to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Contractor and Customer subject to clause 4 of this contract.
2. ACCEPTANCE
- 2.1 Any instructions received by the Seller from the Customer for the supply of Goods shall constitute acceptance of the Terms and Conditions contained herein.
 - (a) Where such acceptance by the Customer is acknowledged by means of Electronic Transmission the provisions of the Contract and Commercial Law Act 2017 Part 4 Subpart 1 will apply.
 - (b) These Terms and Conditions of Trade will take priority over any other documents tendered for agreement.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these Terms and Conditions by the Customer the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with the written consent of the manager of the Contractor.
- 2.4 None of the Contractors agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Contractor in writing nor is the Contractor bound by any such unauthorised statements.
- 2.5 The Customer undertakes to give the Contractor not less than (7) days prior written notice of and proposed change in the Customers name and of any change in the Customers details (including but not limited to changes in the Customers address facsimile phone number or business practice) and change of ownership.
3. GOODS / SERVICE
- 3.1 The Goods and or Services are as described on the invoices, quotation, estimate, work authorisation or any other work commencement forms as provided by the Contractor to the Customer.
- 3.2 Delivery of Goods in volume from the Contractor to the Customer may be subject to discrepancies of a margin of 5% over or under. Unless otherwise agreed in writing this margin shall be charged or deducted respectively on a pro rata basis.
4. PRICE and PAYMENT
- 4.1 At the Contractors sole discretion the Price shall be either:
 - (a) The Price shall be as indicated on invoices provided by the Contractor to the Customer in respect of Goods supplied; or
 - (b) The Price of the Goods shall, subject to clause 4.2, be the Contractors quote/estimate Price, which shall be binding upon the Contractor provided that the Customer shall accept in writing the Contractors quotation within 30 days.
- 4.2 Any variation from the plan of scheduled work or specification will be charged for, on the basis of the Contractors quotation/estimate and will be shown as extras on the invoice. Payment for extras must be made in full at the time of completion. This includes, but is not limited to additional costs incurred by rock stratas, aquifers or water tables exposed after the excavation commences.
 - a) Any request for the Contractor to verify the accuracy of specific Services or find the location of specific Services will occur extra costs unless otherwise agreed to.
- 4.3 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other forms. If no date is stated then payment shall be on delivery of the Goods/Services.
- 4.4 At the Contractors sole discretion, payment for approved Customers shall be due on 20th of each month following the date of an invoice/statement posted to the Customers address or addresses for notices.
- 4.5 Payment will be made by cash, or direct credit or any other method as agreed to between the Contractor and the Customer.
- 4.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable except to the extent that such taxes are expressly included in any quotation/estimate given by the Contractor.
5. DELIVERY OF GOODS
- 5.1 The Customer shall make all arrangements necessary to provide clear access for the contractor to deliver Services in accordance with the accepted Services agreed to.
 - a) It is the Customers responsibility to ensure the Services chosen are suitable for the working environment where the Service is to be provided.
 - b) It is the Customer's responsibility to ensure necessary consents or permission or any other requirements are obtained including but not limited to environmental health and safety matters.
 - c) If in the opinion of the Contractor the site is unsafe or becomes unsafe during the course of the Services the Contractor or Contractor's operators may make a decision not to continue with the work.
 - d) Any decision made not to continue the work is binding on the Customer and the Customer shall not claim for damages or costs.
 - e) The Customer will compensate the Contractor for any cost involved including down time and rescheduling of the work
- 5.2 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all.
- 5.4 The Contractor may deliver the Goods by separate installments (in accordance with an agreed delivery schedule). Each separate installment shall be invoiced and paid for in accordance with the provisions in this contract.
- 5.5 All transportation cost and insurance of the Goods provided by the Contractor to the Customer shall be the Customer's responsibility.
6. RISK
- 6.1 If the Contractor retains property in the Goods nonetheless all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to the property in them passing to the Customer, the Contractor is entitled, without prejudice to any of its other rights to remedies under these Terms and Conditions (including the right to receive payment of the balance of the Price of the Goods) to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these Terms and Conditions. The production of these Terms and Conditions by the Contractor is sufficient evidence of the Contractors rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
7. DEFECTS / RETURNS
- 7.1 The Customer shall inspect the Goods and shall within Two (2) days of delivery notify the Contractor of any alleged defects, damage, or failure to comply with the description or quote. The Customer shall afford the Contractor the opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall conclusively be presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 7.2 For defective Goods which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractors liability is limited to either (at the Contractors sole discretion) replacing the Goods or repairing the Goods provided that:
 - (a) the Customer has complied with provisions of Clause 7.1
 - (b) in respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in assessing the Customers claim.
8. CONTRACTUAL LEGISLATION
- 8.1 The provisions within these Terms and Conditions are subject to the Contract and Commercial Law Act 2017 Part 2 Subpart 3.
9. DEFAULT & CONSEQUENCES OF DEFAULT
- 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due and daily until the date of payment at the rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2 If the Customer defaults on payment of any invoice when due, the Customer shall indemnify the Contractor from and against all of the Contractors costs and disbursements including on a solicitor and own client basis and in addition all of the Contractors nominees cost of collection.
- 9.3 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligations (including those relating to payment) the Contractor may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms and Conditions. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor exercised its rights under this clause.
- 9.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following will apply: An immediate amount shall be levied for administration fees which sum shall become immediately due and payable in addition to interest payable under clause 9.1 hereof.
- 9.5 In the event that:
 - (a) any money payable to the Contractor becomes overdue or in the Contractors opinion the Customer will be unable to meet its payments as they fall due, or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors, or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer then without prejudice to the Contractors other remedies at Law, the Contractor shall be entitled to cancel all or part of the order of the Customer which remains unperformed in addition to and without prejudice to and other remedies; and
 - (e) all amounts owing to the Contractor shall, whether or not due for payment, immediately become due and payable.
10. TITLE
- 10.1 It is the intention of the Contractor and agreed by the Customer that property in the Goods shall not pass until;
 - (a) the Customer has paid all amounts owing for the particular Goods and;
 - (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all the contracts between the Contractor and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Contractor has received payment and all other obligations of the Customer are met.
- 10.2 It is further agreed that:
 - (a) until such time as ownership of the Goods shall pass from the Contractor to the Customer the Contractor may give notice in writing to the Customer to return the Goods or any of them to the Contractor. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
 - (b) if the Customer fails to return the Goods to the Contractor then the Contractor or the Contractors agent may enter upon and into land and premises owned or occupied or used by the Customer or at any premises as the invitee of the Customer to where the Goods are situated and take possession of the Goods without being responsible for any damage caused.
11. PERSONAL PROPERTY SECURITIES ACT 1999
- 11.1 Upon assenting to these Terms and Conditions in writing the Customer acknowledges and agrees that:
 - (a) These Terms and Conditions constitute a security agreement for the purpose of the PPSA and;
 - (b) A security interest is taken in all Goods previously supplied by the Contractor to the Customer and all Goods that will be supplied in the future by the Contractor to the Customer during the continuance of the parties relationship.
- 11.2 The Customer undertakes to:
 - (a) Sign any further documents and/or provide any information. Such information to be complete and accurate and up to date in all respects which the Contractor may reasonably require to register a financing statement or financing charge statement on the Personal Properties Security Register.
 - (b) Indemnify and upon demand reimburse the Contractor for all expenses incurred in registering a financing statement or financing charge statement on the Personal Properties Security Register or releasing any Goods charged thereby;
 - (c) not registering a financing charge statement or a charge demand without the prior written consent of the Contractor;
 - (d) give the Contractor not less than fourteen (14) days prior written notice of any proposed change in the Customers name and/or any other changes in the Customers details (including but not limited to change to the Customers address contact numbers or business practice) and;
 - (e) the Customer will immediately give advice to the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 The Contractor and the Customer agree that nothing in sections 114(1)(a) 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 11.4 The Customer waives its rights as a debtor under sections 116,120(2), 121,125,126,127,129,131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Contractor the Customer waives its rights to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Customer unconditionally ratifies any action taken by the Contractor under and by virtue of the power of attorney given by the Customer to the Contractor under clauses 11.1 to 11.5.
12. SECURITY & CHARGE
- 12.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have, howsoever;
 - (a) Where the Customer and or the Guarantor (if any) is the owner of land, realty or other asset capable of being charged, both the Customer and or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractors nominee to secure all amounts and other monetary obligations payable under the Terms and Conditions. The Customer and/or the Guarantor acknowledge and agree that the Contractor (or the Contractors nominee) shall be entitled to lodge where appropriate a caveat and that caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Contractor elect to proceed in any manner in accordance with this clause and or its sub-clauses the Customer and or Guarantor shall indemnify the Contractor from and against all the Contractors costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause 12, 12.1(a) to (b) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Contractor or the Contractors nominee as the Customers and/or Guarantors true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other Terms and Conditions as the Contractor and or the Contractors nominee shall see fit in his/her/its/their absolute discretion against the joint and or several interest of the Customer and/ or the Guarantors in any land realty or asset in favour of the Contractor and in the Customers and/or the Guarantors name as may be necessary and other acts including instituting any necessary legal proceedings and further to execute all or any documents in the Contractors absolute discretion which may be necessary or advantageous to give effect to the position of this clause.
13. LIMITATION OF LIABILITY
- 13.1 To the fullest extent permitted by law the Contractor shall not be liable for loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by the Contractor to the Customer.
- 13.2 The Customer shall indemnify the Contractor, its officers, employees, agents, or subcontractors against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of this clause whether caused or arising as a result of the negligence of the Contractor or otherwise, brought by any persons in connection with any matter, act, or omission or error by the Contractor, its agents or employees in connection with the services provided.
 - a) the Contractor shall not be liable for any damages caused by the inaccurate locating of Services by the Customer prior to work starting or where the Contractor has been given a supplied plan showing the Services
 - b) the Contractor is not liable for any loss and/or damage resulting from any unforeseen changes in ground conditions exposed after commencement of the Work.
14. CANCELLATION
- 14.1 The Contractor may cancel these Terms and Conditions or cancel delivery of the Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Contractor shall promptly repay the Customer any sums paid in respect of the price for the Goods. The Contractor shall not be liable for any loss or damage arising from such cancellation.
- 14.2 At the Contractors sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any cost incurred by the Contractor up to the time of cancellation.
15. PRIVACY ACT 1993
- 15.1 The Customer and the Guarantors (if separate to the Customer) authorises the Contractor to collect, retain and use any information about the Customer, for the purpose of assessing the Customers creditworthiness or marketing any Goods and services provided by the Contractor to any other party.
- 15.2 The Customer authorises the Contractor to disclose any information obtained to any person for the purpose set out in clause 15.1.
- 15.3 Where the Customer is a natural person the authorities under (clause 15.1 and 15.2) are authorities or consents for the purpose of the Privacy Act 1993.
16. CONSUMER GUARANTEES ACT 1993
- 16.1 This agreement is subject, in all cases except where the Customer is contracting within the Terms and Conditions of a trade/business (which cases are specifically excluded) to the provisions of the Consumer Guarantees Act 1993.
17. LIEN
- 17.1 Where the Contractor has not received or been tendered the whole of the price, or the payment has been dishonoured, the Contractor shall have;
 - (a) a lien on the Goods;
 - (b) the right to retain them for the price while the Contractor is in possession of them.
 - (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale
 - (e) the foregoing right of disposal, provided that the Lien of the Contractor shall continue despite the commencement of proceedings or judgement for the price having been obtained.
18. GENERAL
- 18.1 All Goods and Services supplied by the Contractor are Subject to the laws of New Zealand and that the Contractor takes no responsibility for changes in the Law that affect the Goods and Services supplied.
- 18.2 If any provision of these Terms and Conditions shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected or prejudiced or impaired.
- 18.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these Terms and Conditions.
- 18.4 In the event of any breach of this contract by the Contractor the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Contractor exceed the price of the Goods.
- 18.5 The Customer shall not set off against the Price amounts due from the Contractor.
- 18.6 Neither party shall be liable for any default due to any act of God, terrorism, war, earthquake strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 18.7 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customers consent.
- 18.8 The Contractor shall not be liable for errors or omissions arising from oversight or a misinterpretation of the Customers verbal instruction.
- 18.9 The Contractor reserves the right to review these Terms and Conditions at any time and from time to time. If following any such review there is to be any change in the Terms and Conditions that change will take effect from the date on which the Contractor notifies the Customer of such change.