

## TERMS OF TRADE

Work and materials supplied by HIWAY NEW ZEALAND LIMITED ("the Company") are supplied to the PERSON, PARTNERSHIP OR COMPANY ("the Purchaser") for sale on the following terms and conditions:

1. Terms of Contract between Company & Purchaser
  - a. These Terms of Contract between the Company and Purchaser shall apply to all orders accepted by the Company or quotations approved by the Purchaser and that these Terms and Conditions shall prevail and take precedence over any written document or oral message from the Purchaser and in the case of conflict or dispute between the parties these Terms and Conditions shall prevail. Where the Company fails to enforce any of the Terms and Conditions of this contract or fails in any way to exercise its rights under this contract the Company will not be deemed to have waived these rights with respect to any Term or Condition or right.
2. Definitions
  - a. Machine Hire: Shall mean machine hire for equipment. Supplied at an hourly rate or at a fixed cost price at the rates specified in the Quotation Schedule or if no rates are specified, at the Company's current rates per hour.
  - b. Labour Services: Services shall mean labour services supplied at an hourly rate or at a quoted fixed cost at the rates specified in the Quotation Schedule or if no rates specified, at the Company's current rates per hour.
  - c. Quotation Schedule: Means the Quotation Schedule prepared by the Company providing prices of the labour services, materials and work to be provided by the Company. The prices contained in the Quotation Schedule are subject to variation/adjustment as is detailed in this Agreement. If there is any conflict between the provisions contained in the Quotation schedule and the terms contained herein then the provisions of the Quotation Schedule shall take precedence.
  - d. Work: Means all construction, earthworks, stabilisation, design, consulting, labour services and all other work or services to be provided by the Company.
  - e. Materials: Means all aggregates, KOBM, Durabinds (and other binders), lime, cement, concrete, pipes and other materials to be supplied by the Company.
  - f. Stabilised Materials: Means all soils clays or other materials in sit'u (and/or blended with materials supplied by the company) and then worked or stabilized by the company with or without the other materials.
  - g. Resource Consents: Means all necessary Resource Consents required by any local or Regional Authority to be obtained to undertake the work.
  - h. Confirmation of Acceptance of Terms: Means confirmation from the Purchaser that it accepts the rates/prices contained in the Quotation Schedule and those terms. Confirmation from the Purchaser can be by way of written or oral advice or by the Purchaser instructing the Company to establish "on site". All the work to be provided shall be provided by the company on the terms and conditions in this document.
3. Quotations and Price
  - a. The Company shall quote a cost for work in its Quotation Schedule following instructions from the Purchaser and the Purchaser shall confirm the cost by confirmation of acceptance of terms. Quotations shall be valid for (30) thirty days but the Company may withdraw any Quotation before Purchaser has confirmed acceptance or if the work has not commenced within 60 days of the acceptance being given.

- b. No order by a Purchaser after confirmation of acceptance of terms shall be cancelled without the consent of the Company, and in such cases the Purchaser will be liable to pay the Company all costs and expenses incurred by the Company in fulfilling the order to the date of cancellation; and if materials cannot be cancelled or returned or used on another job then those materials shall be paid for at the agreed rate in the Quotation Schedule.
  - c. The Quotation Schedule price may be increased if the Company suffers any cost increases which are beyond its control in the supply, production and delivery of the work (including increases in materials and a general wage agreement) between the date of the Quotation Schedule price and the supply of the work.
  - d. The Quotation Schedule price may be increased if the Purchase varies or alters the nature of the specifications of or timing of the work to be undertaken by the Company.
  - e. The Company agrees to pass on cost reductions to the Purchaser that may result upon completion of supply.
4. Supply of Labour for Excavation or Removal or Preparation of Site
- a. The price of the services, excavation or removal of redundant materials or buildings in order to prepare the site for the work will be quoted by the Company as an estimate where excavation or removal is required. The final price shall be the invoice charged to the Purchaser which may be varied or altered if the Company provides evidence of:
    - i. any cost increases outside of its control;
    - ii. deficiencies in information supplied by the Purchaser; or
    - iii. any delays caused by the Purchaser or its agents where the Company has presented itself to do the work agreed, or where the Company discovers or encounters buried utilities (water pipes, power or utility lines, sewer or stormwater pipes) or medium not previous known and where the Purchaser has not notified the Company; and
    - iv. any rock, previously stabilised material, hazardous material, puggy or loose soil, reinforcing steel.
  - b. In the event that after the work has commenced the Company becomes aware of any undisclosed items (of the nature detailed in clauses (a) i to iv above) the Company may at its option cease supply of work and provide the Purchaser with an estimate of costs for the additional supply and the Purchaser has the option to pay for supply completed to the time of discovery and terminate the contract OR accept the additional costs to complete the order including any damage to the Company's equipment as a result of unbound surfaces or below surface mediums.
  - c. The quotation and price of labour and parts for installation or removal and travelling time may also include subcontractors or agents used by the Company to undertake the work on behalf of the Company.
5. Delivery of Materials/Work
- a. Delivery of the materials to the site owned by the Purchaser or under the care or responsibility of the Purchaser shall constitute delivery. The Company will make every effort to ensure that the materials and work are supplied on time, but will not be responsible for any loss arising in any way from delays in delivery.
  - b. Where the Company has performed part or all of the supply of materials and work at a time agreed by the Purchaser but where delivery of the materials or the work is delayed because of any act, omission or delay by the Purchaser or where the Purchaser has not rendered the site safe under the Health and Safety in Employment Regulations, the Company will require the Purchaser to pay the costs incurred by the Company in not being able to carry out the supply the Company may also charge stand by costs while the Purchaser renders the site ready.

- c. Where the Company is not undertaking the design of the work then:
  - i. the Purchaser shall be deemed to have assumed full responsibility for the supply of design specifications, and materials detailed in the Quotation Schedule and it shall be the sole responsibility of the Purchaser that design and specifications are satisfactory for the purposes they are intended; and
  - ii. the Purchaser will indemnify the Company against all liability or losses that may be incurred that may arise as a result of any deficiency or defect in respect of the designs or specifications.

## 6. Payment

- a. Payment to be made by deposit declared in the Quotation Schedule before work will begin and final payment is to be made in full without deduction or setoff according to the terms set out in the Quotation Schedule.
- b. If payment is not made in full by the due date, the Company is entitled to charge the Purchaser interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by the Company's bank calculated from the due date of payment down to the actual date of payment, and the Company may at its option suspend the sale and secure the materials in its possession regardless of the term of this contract until the overdue amounts are paid in full.
- c. If at any time the Company reasonably deems the credit of the Purchaser to be unsatisfactory, it may require the Purchaser to provide at the Purchaser's cost, security for payment and/or the Company may suspend performance of any of its obligations under this Contract until security is provided to the Company's satisfaction and the Company may require the Purchaser to pay all costs incurred as a result of suspension and re-commencement of supply including debt collection and legal costs.

## 7. Risk & Ownership of Title

- a. Risk of any loss, damage or deterioration of or to the materials shall be borne by the Purchaser from the time of delivery of the materials into the Purchaser's care and control and the Purchaser shall insure the materials all usual risks.
- b. The Purchaser agrees that the Company has legal and equitable title to materials supplied by it until the Purchaser pays in full without deduction or set off. This reservation of title and ownership is effective whether or not the materials have been altered from that supplied or mixed with other materials or fixed to a building or property. Where such materials are mixed and are severable but not identifiable or where it is impractical to remove the materials without incurring loss to an innocent third party, the Company is co-owner of the site or property in proportion to the contribution of value made by the materials and work to the value of the Purchaser's building or property or in the alternative the Company can claim a charge on monies due from the owner of the property to the Purchaser.
- c. In the alternative should the materials become mixed with other materials on the site controlled by the purchaser (but not owned) and it is not practicable to remove those materials and there are monies due from the owner of site to the Purchaser then the Purchaser assigns to the Company all its right (title and interest) in those monies to meet any amounts owned by the Purchaser to the Company for work undertaken and materials supplied.
- d. The Purchaser further agrees that it cannot sell property or part property in which the Company has title under clause (b), to any third party without the written permission of the Company and can only negotiate a sale by declaring the Company's reservation and value of title to the third party and receive any proceeds from sale as the fiduciary agent of the Company and hold such proceeds in a separate trust account and pay the Company for the outstanding monies owed.
- e. In any event where materials remain unpaid by the Purchaser, the Company has unreserved right to enter the property of the Purchaser or its agents during normal business hours and remove materials relating to the unpaid amount and the Purchaser will not hold the Company responsible for any economic or consequential loss that the Purchaser may suffer as a result, whether the materials are attached to other materials or building or property owned by the Purchaser, or not.

## 8. Intellectual Property

- a. The Purchaser agrees that where the Company supplies intellectual property, the ownership of such intellectual property shall always remain with the Company and the Purchaser further agrees that it shall not use the intellectual property in any manner whatsoever whether in complete form or in any way adapting or altering without the prior written consent of the Company.
- b. Where the Company has followed plans, specifications and instructions being oral or written provided by the Purchaser, the Purchaser shall indemnify the Company against damages, costs and expenses in respect of which the Company may become liable by following such plans, specifications and instructions and including those arising from the infringement of patents, copyrights or trademarks by the Purchaser.
- c. Should the Company supply intellectual property (that belongs to the Company) and any part of it is used by the Purchaser without the Company's permission on any subsequent work undertaken by the Purchaser then the Company shall be entitled to by way of damages the contract value of the other work undertaken using the Company's intellectual property.

## 9. Variations

- a. Any variations regarding price or supply to that agreed in the Quotation Schedule that may be agreed between the parties during the period of supply shall be in writing and take precedence over that part of the Quotation Schedule affected. If the Company is requested to undertake a variation without a price being agreed upon then the Purchaser shall pay the Company's current rates for the work undertaken or materials used in the variation.

## 10. Warranty and Guarantees

- a. The warranty on materials supplied by the Company but not manufactured by the Company shall be the warranty of the original manufacturer.
- b. It shall be the sole responsibility of the Purchaser that roading surfaces under the ownership, care or responsibility of the Purchaser is of adequate strength to support loads including vibration, weight and depth checks relating to equipment and methods the Company will use in its work and the Purchaser further agrees that it will not hold the Company liable in any way for damage to roading surfaces, footpaths, crossings or any other part of the road as a result of failure of the Purchaser's responsibility in this regard.
- c. It shall be the sole responsibility of the Purchaser to identify and accurately locate the position of any Telecom, electrical, gas, data, water, stormwater or sewerage services or other hazards ("the hazards"). Should the Purchaser not clearly and accurately communicate the position of these hazards in a format that can be interpreted by the Company then the Purchaser shall indemnify the Company against all liability that may arise as a result of any damage to these hazards/services.
- d. It shall be the sole responsibility of the Purchaser to define all boundary and set out pegs, levels and level tolerances for roading surfaces and property sites under the ownership, care or responsibility of the Purchaser and the Purchaser further agrees to indemnify the Company against any liability it may have to any third party as a result of this information being incorrect.
- e. The Purchaser shall agree not to hold the Company responsible for any ponding or puddling on any asphalt or concrete surface where the grade is less than 1 in 80.
- f. The Company warrants that it will supply the materials as the description defined in the Quotation Schedule and Warranty and it will replace materials supplied under this Contract that are defective and make good any defect in workmanship for any work undertaken provided that the Purchaser notifies the Company in writing of any defect within (30) thirty days of delivery.

- g. The Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Purchaser or any other person arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the contract including delays in the delivery of materials or work to be undertaken or from any cancellation of the contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors.
- h. The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or reasons force majeure caused beyond the Company's reasonable control. The occurrence of such an event shall not give the Purchaser a right of cancellation of any contract.
- i. Notwithstanding anything herein before contained in this section 10 or contained elsewhere in the contract then the total and full liability of the Company whether in contract or pursuant to any cancellation of the contract or in act or otherwise however, in respect of all claims for loss, damage or injury arising from breach of any of the Company's obligations arising under or in connection with work to be undertaken or the materials to be supplied or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors then the total and full liability of the Company shall be linked at the Company's option, to the price of the materials, or replacement of the materials or the agreed price of the value of the work to be undertaken by the Company.
- j. The Purchaser shall make the limitation of the Company's liability to the value of the work undertaken or materials supplied (clause i above) to the attention of and a contractual term with any third party it has a contractual relationship with in respect of the work to be undertaken or the materials to be supplied to the intent that the third party is bound by this provision. Should the Purchaser fail to bind the third party with the Company's limitation of liability referred to in clause i above then it will indemnify the company against all liability it may incur to any other party in contract or negligence or on any other grounds.
- k. It shall be the Purchaser's obligation to obtain all resource consents in respect of the work proposed, and to advise the Company of the terms and conditions of those consents so that the Company can comply with those consents in as far as the work is undertaken or materials supplied is by these consents. If the Purchaser fails in its obligations to obtain all necessary consents or to provide details of those consents to the Company then the Purchaser will indemnify the Company against all liability it may have to any Local or Government Authority or to any other third party.

## 11. Claims for Damaged or Defective Materials or Work

- a. The Company will not accept any claim by the Purchaser for any reasons where the Purchaser may be prejudiced by the defect or failure of the materials or work or the materials stabilised including economic loss, consequential loss or other form of loss whatsoever including but not limited to where:
  - i. the defect or failure to the materials or stabilised materials is due to or resulting from damage or misuse, negligent maintenance or care or loading or trimming while the materials or stabilised materials are in the possession of the Purchaser or failure to follow care instructions or the materials or stabilised materials have not been used for the purpose for which they were designed or the materials or stabilised materials are used by persons not technically competent with the design of the materials or stabilised materials.
  - ii. the defect, or failure is due to defective materials, instructions or plans or design or specifications supplied by the Purchaser.
  - iii. the defect or failure is due to non operation of the materials due to the Purchaser or Purchaser employees or agents not complying with employment laws, Health and Safety in Employment or Resource Consents any other laws of New Zealand.
  - iv. the defect or failure is caused by Purchaser misinterpretation of oral or written instructions for care loading trimming given by the Company or not in acceptance with accepted engineering design or practice.

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- v. the defect or failure is due to acts, defaults or omissions outside the control of the Company (force majeure).
- b. Where the Company elects to replace defective materials it may replace the materials as soon as reasonably practicable and such substituted materials shall become subject to the provisions of this Agreement in the same manner as the materials for which they shall have been substituted. If the Company cannot make replacement within 48 hours of notification of the materials becoming defective, the Company will repair the materials and if repair is not practicable, will credit the Purchaser the full payment that has been made for that part of the materials that are defective or damaged.
- c. If the Purchaser does not comply with the above requirements, the Purchaser will be deemed to have accepted the materials and the Company will not incur any liability whatsoever in relation to the materials.
- d. The Company may at its discretion, give credit for returned materials incorrectly ordered by the Purchaser which are delivered to back to the Company within two (2) days at the Purchasers cost in the same condition and packaging in which they were dispatched, with a copy of the invoice. The Company may charge (15) fifteen percent of the cost of the materials as a handling and administration charge.
- e. The Purchaser agrees that claims shall not be considered in respect of materials which:
  - i. are not intact and in original condition;
  - ii. have been abused or improperly stored or suffered damage or contaminated or have water damage while in the care or possession of the Purchaser;
  - iii. have been sold to the Purchaser on a non-refundable basis;
  - iv. are more than (2) two days after the date of delivery;
  - v. in the case of discrepancies in order quantity or type of materials where the claim is not in writing within (3) three working days of receipt of the order; and
  - vi. are lime or cement.

## 12. Grounds for Termination by the Company

- a. This Agreement may be terminated by the Company immediately on written notice to the Purchaser, if an Event of Default of payments due to the Company by the Purchaser occurs, and the Company may enter the premises of the Purchaser where the materials are stored and remove them.
- b. Default will also mean, if the Purchaser:
  - i. Fails to commence operations of the contract on or before commencement date or have the site ready for the commencement of the work as agreed;
  - ii. fails to comply with any quality or standards for the care of the materials issued by the Supplier;
  - iii. shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors;
- c. Where the Purchaser is a Company do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Company or if a Receiver is appointed in respect of all or any assets of the Company;
- d. fails to have the necessary resource consents; and
- e. fails to adequately locate all known hazards. No release from obligations. Terminations of this agreement shall not relieve the Purchaser of its obligations to pay all money owed by it to the Company

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on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement shall not relieve the Purchaser from liability arising from any antecedent breach of the terms of this agreement. Immediate Steps Upon Termination. Upon the termination of this agreement for any reason, all rights of the Purchaser granted by this agreement shall terminate and the Purchaser will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this agreement.

## 13. Consumer Guarantees Act 1993

- a. It is acknowledged that where the acquisition of materials by the Purchaser from the Company is deemed to be for the business purposes of a business these terms shall have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.
- b. The Purchaser shall not, give or make any undertaking, assertion or representation in relation to the Materials or work to be undertaken to any other person or company without the prior approval in writing of the Company, and the Purchaser shall indemnify the Company against any liability or cost incurred by the Company as a result of any breach by the Purchaser of this provision.

## 14. Dispute and Arbitration

- a. In the event of any dispute between the Company and the Purchaser arising out of this Agreement, the Purchaser shall agree to pay the undisputed part of the outstanding monies owned and such dispute shall be referred to an arbitrator, to be agreed between the parties and the arbitrator shall arbitrate in accordance with NZS3910 1998 (NZ Contractors Standard) or where the Purchaser has not engaged a registered engineer, in accordance with NZS3915 2000 and upon failure to reach agreement arbitration will be conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

## 15. Guarantor

- a. Where the Purchaser is a company, the person(s) referred to as guarantor(s) in this Agreement shall personally guarantee the obligations of the Purchaser.

## 16. Authority

- a. The person executing this Agreement on behalf of the Purchaser warrants it has the authority to bind the Purchaser with these terms.