

# Terms of Trade.



 **Aotea**

# Contents

Page

3

4

5

6

7

8

9

10

11

Terms of Trade

Definitions

1 - Acceptance of Terms & Conditions

2 - Ownership

3 - Prices

4 - Payment

5 - Variations

6 - Delivery and Risk

7 - Bailment

8 - Health & Safety / Site Access

9 - Personal Property Securities Act  
1999 (PPSA)

10 - Default

11 - Costs

12 - Credit Limits

13 - Limitation of Liability

14 - Penalty Interest

15 - Privacy Act

16 - Force Majeure

17 - Disputes

18 - Construction Contracts Act 2002

19 - Miscellaneous  
Individual Terms

## Terms of Trade

All engagements are subject to these Terms of Trade and a Credit Application, along with any individual terms as amended under "Individual Terms". In the event of an inconsistency between these Terms of Trade, and any Individual Term, the Individual Term shall prevail.

## Definitions

**"Aotea"** means each Operating Company and 'The Company' being AGHL Limited

**"Credit Application"** means an Aotea Credit Application form.

**"Customer"** means you the Customer, whether a Credit Application Form has been completed and submitted or not.

**"Customer Credit Account"** means the Customer Credit facility extended to the Customer by Aotea on the terms of these Terms and Conditions, and those contained in the Customer's Credit Application.

**"Goods"** means, and without limitation includes, any appliance, product, equipment, machinery cabling or any other product supplied by Aotea to the Customer.

**"Guarantor"** means a Guarantor listed in the Credit Application.

**"Services"** means any Service provided by Aotea in connection with, at the request of or in relation to the supply of any Goods, including without limitation quoting for any proposed work, and any costs incurred by Aotea in the enforcement of recovery or recovery of any Goods and/or outstanding monies.

## 1 Acceptance of Terms and Conditions

- 1.1 Contracting Aotea to carry out work or acceptance of a quote provided by Aotea, constitutes acceptance by the customer of these terms of trade.

## 2 Ownership

- 2.1 Ownership and title to all Goods remains with Aotea and does not pass to the Customer until all associated invoices issued to the Customer and recorded against the Customer Credit Account are paid in full.

## 3 Prices

- 3.1 All Goods and Services will be charged at rates applicable at the date of billing.
- 3.2 Unless otherwise stated all prices are exclusive of GST and other taxes which must be paid by the Customer.

- 3.3 Aotea may require a deposit be paid at the time the Customer places an order (“Deposit”) and;
- (a) a Customer order may not be completed until such time as the Deposit is received by Aotea for that order;
  - (b) in the event the Customer Credit Account is in arrears at the time of the order and a Deposit is received, Aotea may at Aotea’s sole discretion apply the Deposit as required to the Customer Credit Account to clear any arrears;
  - (c) and the Customer may be required to make a further Deposit payment to Aotea to ensure the Customer Credit Account is not in arrears and a sufficient Deposit has been paid.
- 3.4 The Customer must pay freight costs and insurance charges and for time spent by Aotea in travel to and from the job, as well as time spent in the acquisition of materials required.
- 3.5 Aotea reserves the right, on giving prior written notice to the Customer before delivery, to vary the price of the goods ordered by the Customer between the date of the Customer’s order and the date of delivery to take account of relevant changes such as (but without limitation) any increase in labour costs, manufacturing costs, costs of materials or any related services (including without limitation freight or delivery services, packaging services or insurance).

## **4 Payment**

- 4.1 Aotea will invoice the Customer for all sales and Services (“Invoice”).
- 4.2 As set out by Aotea in their written quotation/contract, payment terms may be 7 days, 10 days, 20 days or on the 20th of the following month, as stipulated on their invoice.
- 4.3 If payment is not made by the Customer on the due date, Aotea may suspend or terminate supply.
- 4.4 Payment of all amounts is to be made in full without any set-off, reduction or counterclaim.
- 4.5 In accepting any payments from the Customer, Aotea will not be bound by any conditions or qualifications or other terms which the Customer may have attached to those payments.

## **5 Variations: Materials supply, Dimensions, Plans and Specifications**

- 5.1 Any variations to the original quotes will be documented by Aotea and are to be signed and accepted by the customer before work resumes. The account for the variation will be issued with your invoice and be paid under our normal payment terms.
- 5.2 Aotea shall be entitled to rely on the accuracy of any plans, specifications and other relevant information supplied by the client. It shall be the client’s responsibility to check all measurements and specifications supplied in any quote or estimate prior to acceptance or approval. Should there be any changes required, this must be advised

to Aotea in writing prior to placing any order or accepting any quote. Any extra costs due to incorrect information being supplied will be met by the customer.

## 6 Delivery and Risk

- 6.1 Any quotations of delivery times agreed by Aotea are estimates and not commitments and no delay in delivery will entitle the Customer to refuse to accept delivery or cancel its order or otherwise entitle the Customer to any Damages whatsoever. Time for delivery is not of the essence.
- 6.2 Risk (including, without limitation, insurance responsibility) of any loss, damage or deterioration of or to the goods shall pass to the Customer upon the delivery of goods to the Customer.
- 6.3 Claims made for damage in respect of defective goods or goods lost or damaged in transit must be made against Aotea in the following manner:
- (a) Prior to accepting the goods and acknowledging delivery the Customer must ensure that the complete consignment as per the delivery note has been received;
- 1 In the case of damage the delivery note must be endorsed by the Customer setting out in full the reasons for non-acceptance of the goods; and
  - 2 In any case where the defect or damage is not reasonably able to be ascertained upon delivery, the Customer must notify Aotea within 7 days of delivery of the full particulars of the defect and the Customer must make the goods available for inspection by Aotea.
- 6.4 To the maximum extent permitted by law, any liability of Aotea for any defective goods or damaged goods shall, at Aotea's election, be limited to replacement of the goods or a credit in respect of the goods.
- 6.5 The liability of Aotea in respect of the failure to deliver due to loss in transit or damage in transit where risk has not passed to the Customer shall be limited to paying the requisite insurance proceeds to the Customer or assigning any such claim to the Customer and in no event whatsoever shall any claim for defect in goods exceed the purchase price of the such defective goods supplied.
- 6.6 Risk shall pass back from the Customer to Aotea only if Aotea repossesses the goods.

## 7 Bailment

- 7.1 Any items left with Aotea for service, repair or storage shall be held by Aotea as bailee in possession.
- 7.2 The risk of damage of any such items shall remain at all times with the Customer and the Customer is required to maintain insurance policies over those items while they are in Aotea's possession
- 7.3 If the Customer defaults in payment of any Invoice for a period of more than 10 working days, Aotea shall be entitled to, having provided written notice to the

Customer at their last known address, cancel the bailment, take possession of and sell the items and direct the proceeds of such sale to the recovery of all costs incurred by Aotea, including the costs of repair, debt collection commission and or legal fees (on a solicitor Customer basis) and any other costs incurred by Aotea whatsoever as a result of the default.

## **8 Health and Safety / Site Access**

- 8.1 The Customer will provide Aotea with full unhindered access to all areas required to carry out the installation of any Goods to complete any Services, including without limitation the removal of any Goods pursuant to clause 10.2 of these Terms, and will provide Aotea with the Customer's Health and Safety Worksite Plan for assessment and approval ahead of Aotea accessing any Customer controlled worksite as it relates to the Health and Safety at Work Act 2015, if applicable.
- 8.2 In the event Aotea believes the worksite is unsafe, or the Customer's Health and Safety Worksite Plan is insufficient or does not meet the requirements of Aotea's Health and Safety Plan, Aotea may suspend all work at the Customer's work site until that work site is made safe in the opinion of Aotea, at Aotea's sole discretion.
- 8.3 Aotea will be responsible for their own Health and Safety. Aotea must comply with the Health and Safety at Work Act 2015, any regulations made under the Act, and any Health and Safety policies, directives or procedures of Aotea.

## **9 Personal Property Securities Act 1999 (PPSA)**

- 9.1 All terms in this clause 7 of these Terms of Trade have the meaning given in the PPSA, and section references shall be to sections of the PPSA.
- 9.2 Clause 1 of these Terms of Trade creates a security interest in all present and after acquired Goods of the Customer and their proceeds.
- 9.3 The Customer consents to Aotea registering on the Personal Property Security Register ("PPSR") a general security interest over all the Customer's assets, and a security interest over all Goods supplied by Aotea. The Customer waives any right to receive a copy of a verification statement or financing statement under the PPSA.
- 9.4 The Customer waives its rights under sections 114 (1)(a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133,134 and 148 of the PPSA.
- 9.5 If requested by Aotea, the Customer will promptly execute any documents, provide all necessary information including supplying identification suitable to Aotea, and do anything else required by us to ensure that the security interest created under this Agreement constitutes a perfected security interest in the Goods and their proceeds which will have priority over all other security interests in the Goods.
- 9.6 The Customer will pay to Aotea all fees and expenses incurred by Aotea in relation to the filing of a financing statement or a financing change statement in connection with these Terms.

9.7 The customer:

- (a) shall immediately notify Aotea in writing of any change in the Customer's name; and;
- (b) shall immediately notify Aotea of any other information Aotea may need in order to complete a financing change statement.

9.8 The Customer will not enter into any security agreement that permits any person to register any security interest in respect of the goods or the proceeds in priority to the security interest held by Aotea.

## 10 Default

10.1 The security interest created by clauses 1 and 9.3 of these Terms of Trade becomes enforceable if any of the following events occur:

- (a) The Customer fails to pay any money owing on the due date;
- (b) The Customer sells, parts with possession, leases or disposes of any Goods or does anything inconsistent with Aotea's ownership of the Goods prior to making full payment;
- (c) Aotea believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver appointed, or is declared insolvent;
- (d) The Goods are at risk, as that term in is defined in the PPSA;
- (e) Any other of the events provided for in the PPSA apply.

10.2 In addition to rights conferred by part 9 of the PPSA, Aotea may take possession of any Goods and may enter any premises controlled by the Customer, whether or not the Customer is present in order to take possession of Goods pursuant to this clause.

## 11 Costs

11.1 In the first instance, reasonable endeavors will be taken to resolve any dispute. You the Customer must pay all of Aotea's costs of and incidental to the enforcement or attempted enforcement by Aotea of its rights, remedies and powers under these terms, such costs to include debt collection and legal costs and court costs, inclusive of the Disputes Tribunal, on a full indemnity basis.

## 12 Credit Limits

12.1 Aotea may restrict the amount of credit provided to the Customer, and may change that limit from time to time only with prior notice.

12.2 The Customer agrees that where it has obtained credit in excess of any limit noted on the application, or imposed by Aotea, the Customer will be liable in full for payment of any amount owing in excess of that limit, and agrees to immediately pay a sum equal to that excess to Aotea if demanded.

### 13 Limitation of Liability

- 13.1 To the maximum extent permitted by law, any liability of Aotea for any defective or faulty workmanship shall be limited to repair of such workmanship, such repair to be the sole remedy of the Customer.
- 13.2 Aotea shall not be liable under clause 6.3, clause 6.6 or otherwise for any loss, defect or damage arising directly or indirectly from:
- (a) any Force Majeure Event under clause 12.1;
  - (b) any act or omission of the Customer or any person other than Aotea or an authorised sub-contractor of Aotea;
  - (c) any product or service supplied by or on behalf of the Customer or any other contractor or supplier of the Customer including, without limitation, any work undertaken by or on behalf the Customer (including DIY work) before, during or after the engagement of Aotea to provide goods and services;
  - (d) any failure by the Customer to carry out maintenance or comply with any manufacturer instructions or conditions of any manufacturer warranty;
  - (e) any failure by the Customer to follow any guidelines or instructions of Aotea;
  - (f) any moisture spillage or ingress, vermin or insect infestation, misuse or abusive use, accident or neglect or a failure to clean or improper cleaning,
  - (g) use of non-authorised, defective or incompatible parts;
  - (h) repair, modification or other work carried out by any person other than by authorised or unqualified personnel;
  - (i) continued use of any goods after any defect becomes apparent or would have become apparent to any reasonable person; or
  - (j) fair wear and tear.
- 13.3 For the avoidance of any doubt, all materials, property, products, appliances or fittings supplied by or on behalf of the Customer are supplied at the Customer's risk and Aotea shall not be directly or indirectly liable in relation to the selection or suitability of such items.
- 13.4 Aotea is not responsible for any damage caused either to the Goods supplied, or any other equipment, chattel or part of the Customer's premises resulting from a malfunction if :
- (a) The Goods are installed, connected, placed or otherwise delivered by someone other than Aotea; and
    - (i) That person is not suitably qualified; or
    - (ii) The Goods are not fitted to a good trade standard; or
  - (b) The Goods are in any way adapted by someone other than Aotea for a use that they are not specifically intended; or



(c) The Goods are added to or repaired using components not recommended or approved by the manufacturer.

13.5 Aotea has no further liability or responsibility for any direct, indirect or consequential injury, loss or damage arising from any supply of Goods or Services to the Customer.

13.6 Damages for faulty Goods or Services will be limited to the purchase price of those Goods or the value of the Services contracted for.

13.7 The Consumer Guarantees Act 1993 is excluded to the fullest extent permitted by law, and does not apply.

## 14 Penalty Interest

14.1 Penalty Interest will be calculated at a rate of 2.5% above the current overdraft interest rate per month on a daily basis from the due date. Such interest will be payable upon demand.

## 15 Privacy Act

15.1 The Customer authorises Aotea to:

(a) Make enquiries with relevant third parties and/or credit agencies regarding the Customer's credit history

(b) Release information for the above purpose to the extent necessary, to relevant third parties and/or credit agencies

(c) Instruct an agent to carry out any credit enquiries, and the Customer agrees the above authorisations will apply to such agent.

15.2 The Customer authorises any credit agencies and/or relevant third party to disclose any relevant information to Aotea in response to credit enquiries. The Customer acknowledges that any information disclosed to a credit agency will be held on their systems and used to provide their credit reporting service.

## 16 Force Majeure

In the event of a Force Majeure, including for the avoidance of doubt the following situations:

16.1 Any condition or reasonably unforeseeable event which prevents the performance by Aotea of its obligations, or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable including, but not limited to:

(a) war or warlike conditions, riot or civil commotion, terrorism, mobilisation insurrections;

(b) import or export bans, blockades or embargoes;

- (c) statutory or union contract reductions in working hours, strike, lockout or other labour conflicts; and
  - (d) natural catastrophe, earthquakes, storms, floods, fires, epidemics, pandemics.
- 16.2 Wholly or partially prevent or delay Aotea from fulfilling its obligations under these additional terms, Aotea shall:
- (a) use reasonable endeavours to resolve the Force Majeure as quickly as practicable, but shall not be liable to resolve any of the aforementioned labour conflicts on terms not reasonably acceptable to Aotea; and
  - (b) notify the Customer of the Force Majeure incident, its likely duration and the period (in Aotea's opinion) of any consequent delays or other relevant events, and the said dates will be so extended unless the Customer disputes the delay period within seven (7) days of the receipt of the notice in which case the Parties shall consult and endeavour to agree upon a satisfactory extension of time and failing agreement, within seven (7) further days,
  - (c) work with the client through mediation and if this is unsuccessful, refer the matter to the disputes tribunal for judgement.

## 17 Disputes

- 17.1 In the event of a dispute, the parties will in good faith use their best endeavours to attempt to resolve the dispute.
- 17.2 If the dispute cannot be resolved within a reasonable time, the parties may agree to refer the dispute to mediation or other alternative resolution, or either party may refer the matter to arbitration by a sole arbitrator under the Arbitration Act 1996. The parties will agree on the appointment of an arbitrator within 10 Business Days of the notice of referral of the dispute to arbitration. If no agreement can be reached, then on a written application by either party the President of the New Zealand Law Society shall appoint an arbitrator.
- 17.3 Despite any dispute or the referral of that dispute for resolution, the parties shall continue to perform their respective obligations under this agreement as if that dispute had not occurred.

## 18 Construction Contracts Act 2002

- 18.1 Terms of Trade for construction projects are governed by the Construction Contracts Act 2002 and associated legislation and amendments to that legislation.
- 18.2 All retention monies owed to Aotea under a claim must be made by that due date.
- 18.3 Note that any retention monies held and not paid as per any enforceable claim, will attract a 2.5% above the current overdraft interest rate per month, calculated on a daily basis from the due date.

## 19 Miscellaneous

- 19.1 These Terms of Trade may be varied by Aotea at any time without notice to the Customer. New Terms of Trade will be enforceable by Aotea from the date any varied terms of trade are made available to the Customer.
- 19.2 The Credit Application and these Terms of Trade are the entire agreement between Aotea, the Customer and the Guarantor, unless agreed in writing between the Customer. These will be available on our website and the customer will be emailed to advise of the change as and how it affects them.

## Individual Terms

Nil