

LEE BUILDERS

Building Maintenance

Lee Building Maintenance Limited 2011 – T/A Lee Builders

TERMS OF TRADE - 2019 V1.0

1. Definitions

- 1.1 “Agreement” means these Terms of Trade and our quote or other documentation setting out the work we will undertake for you.
- 1.2 “Works” means all goods, services or products of any services supplied from time to time by us to you.
- 1.3 “Order” means any oral or written instruction or direction you give to us to provide any Works to you, including your acceptance of our quote.
- 1.4 “PPSA” means Personal Property Securities Act 1999 as amended or substituted from time to time. Unless the context otherwise requires all words and phrases in clause 18 will have the meanings given to them in, or by virtue of, the PPSA.
- 1.5 “Us” and “We” means Lee Builders. “Our” has a corresponding meaning.
- 1.6 “You” and/or “the Customer” means the person or entity or person(s) or entities making any application for Works or any person(s) acting with ostensible authority on behalf of that entity or person. “Your” has a corresponding meaning.
- 1.7 For the purposes of clause 26 (Guarantee Clause):
 - (a) “I” and “me” means the person who signs these Terms of Trade acting on behalf of the person or entity making any application for Works. “My” has a corresponding meaning;
 - (b) “the Customer” means the person or entity on whose behalf you act, being the principal debtor to us.

2. Interpretation

- 2.1 A reference to the singular includes the plural and vice versa.
- 2.2 If “You” or “I” is more than one party then those parties have a joint and several liability.
- 2.3 Headings are for convenience only and do not affect the interpretation of any provision.

3. Application

- 3.1 These Terms of Trade will apply to all Works supplied by us to you, at any time either before or after you accept these Terms of Trade, unless otherwise agreed in writing by us.

4. Acceptance

- 4.1 Each Order will constitute your acceptance of these Terms of Trade and our acceptance of your Order will create a binding contract.

5. Change in Control

- 5.1 You must give us not less than fourteen (14) days prior written notice of any proposed change of ownership and/or any other change in your details, including but not limited to, changes in your name, address, contact phone or fax numbers, or business practice. You will be liable for any loss incurred by us as a result of your failure to comply with this clause.

6. Price

- 6.1 The price for the Works will be as quoted to you in writing or according to our current price list standard charge out rates.
- 6.2 Any quotation given to you by us for the supply of Works:
 - (a) Will only be valid for 30 days from date of issue of quotation unless otherwise agreed in writing; and
 - (b) May be altered by us due to any circumstances out of our control, including but not limited to any change in cost to us of providing the Works or any additional works required that were not foreseen at the time of providing the quotation.
- 6.3 Unless otherwise provided in a quotation, any quotation given to you by us will be exclusive of all taxes (including Goods and Services Tax), duties, levies, freight, insurance, delivery and travel charges and any other cost or charge that may be incidental to any Works we may provide.
- 6.4 A deposit of 50% is payable on all Orders over \$1,000.00 once we have accepted your Order.

7. Payment

- 7.1 Unless otherwise agreed in writing payment will be due within 14 days of your receipt of our invoice (“the due date”).
- 7.2 Our invoice is not required to specify each individual part or cost incurred on your behalf. Given the nature of works undertaken by us, it is impractical for us to fully list each cost incurred.
- 7.3 Payment may be made by cash, bank cheque, and direct credit to our bank account or by any other method as agreed to in writing by us.
- 7.4 You warrant and undertake to pay the full amount outstanding to us under these Terms of Trade free of all deductions or rights of set off by the due date.
- 7.5 If you wish to dispute any invoice this dispute has to be received by us in writing prior to the due date of the invoice.
- 7.6 We may at our sole discretion allocate any payment received from you towards any amount outstanding to us by you at the time of receipt or at any time afterwards. In the absence of any payment allocation by us payment will be deemed to be allocated in such a manner as preserves the maximum value of our security interest in the Works.

8. Cancellation

- 8.1 We have the right to cancel any Order for Works which we have accepted if:
 - (a) Due to circumstances beyond our control, it would be impractical or unreasonable to fill the Order; or
 - (b) If any information supplied by you is materially incorrect; or
 - (c) If you are in breach of any obligation under these Terms of Trade.
- 8.2 You have the right to cancel any Order for Works which we have accepted if we are in breach of any obligation under these Terms of Trade and have not remedied that breach within a reasonable period of receipt of written notice from you notifying us of the breach.
- 8.3 If you have paid a deposit, and then cancel an Order, we may retain any deposit paid to cover the costs of Works completed or parts ordered prior to the date of cancellation.
- 8.4 If we exercise our right to cancel any Order under clause 8.1, we may accept the return of Works at our sole election, in which case you must pay us our associated costs of accepting return of such Works at the time of return of the Works.

9. Default

- 9.1 We may exercise any of the remedies available to us under these Terms of Trade or otherwise in the event that:
 - (a) A receiver is appointed over any of your assets or undertakings; or
 - (b) You go into voluntary liquidation, amalgamate with another company or acquire your own shares in accordance with the Companies Act 1993; or
 - (c) You suspend payments to your creditors or you make or attempt to make an arrangement or composition or scheme with your creditors; or
 - (d) You become insolvent within the meaning of the Insolvency Act 2006 or the Companies Act 1993.
- 9.2 If full payment for the Works is not made on the due date then, without prejudice to any other remedies available to us, we may:
 - (a) Cancel this contract or withhold supply or provision of Works or any further Works;
 - (b) Charge interest on any amount outstanding to us on a daily basis at a rate of 2% per month compounding during such default until the amount outstanding is paid to us in full;
 - (c) Charge an administration fee on all amounts outstanding to us in addition to any other charges pursuant to this clause; and
 - (d) Require you to pay us all costs incurred by us as a result of your default, including but not limited to administration charges, debt collections costs and legal costs on an indemnity or solicitor/client basis.

10. Risk

- 10.1 Risk in respect of the Works will pass to you when the Works are installed at your premises or the time you pay for the Works, whichever is the earlier.

11. Ownership and Delivery

- 11.1 You agree that ownership of the Works will not pass until you have paid all amounts that are owing to us.
- 11.2 Until you have paid all amounts that are owing to us you hold the benefit of your insurance of the Works on trust for us and must pay to us the proceeds of any insurance in the event the Works are lost, damaged or destroyed;
- 11.3 The production of these Terms of Trade by us will be sufficient evidence of our right to receive the insurance proceeds directly from the insurer without the need for any person dealing with us to make further enquires;
- 11.4 Until you have paid all amounts that are owing to us you must not sell, dispose or otherwise part with possession of the Works other than in the ordinary course of business and for market value. If you sell, dispose or part with

possession of the Works then you must hold the proceeds of any such act on trust for us and must pay or deliver the proceeds to us on demand;

- 11.5 Until you have paid all amounts that are owing to us, unless the Works have become fixtures, you irrevocably authorise us to enter any premises where we reasonably believe the Works are kept and recover possession of them;
- 11.6 We may recover possession of any Works in transit whether or not delivery has occurred;
- 11.7 You will not charge or grant any encumbrance over the Works nor grant nor otherwise give away any interest in the Works while they remain our property;
- 11.8 We may commence proceedings to recover the price of the Works provided notwithstanding that ownership of the Works has not passed to you.

12. Defects in Materials and/or Works Completed

- 12.1 We will remedy any defective workmanship and replace any faulty material sold by us where these are notified to us in writing within 90 days of the completion of the Works.
- 12.2 If you believe the Works are defective in any way, you must give us an opportunity to inspect the Works within a reasonable timeframe to enable us to repair or replace the Works if we consider the Works are defective.
- 12.3 If you fail to comply with this clause, then the Works will be presumed to be free from any defects.

13. Provision of Works

- 13.1 Time will in no case be of the essence in respect to the provision of Works. We will not be responsible for any delay in the provision of Works and you will not be entitled to cancel any Order because of any delay. Any timeframes provided for provision of Works are given in good faith and are not to be treated as a condition of purchase.
- 13.2 The Works will not include any structural or other alteration to any building.
- 13.3 We shall be entitled to rely on the accuracy of and shall not be obliged to check any plans, specifications and other information supplied by you. We shall bear no responsibility for the Works or any part of the Works supplied in compliance with those plans and specifications.

14. Access

- 14.1 You will ensure that we have clear and free access to your property or worksite at all times to enable us to undertake the Works. We will not be liable for any loss or damage to your property or worksite due to our inability to obtain access to your property to undertake the works unless such damage is a result of negligence on our part.

15. Works Involving Underground Services

- 15.1 Prior to us commencing the Works on your property or worksite, you must advise us of the exact location of all underground services. The underground services that must be identified, include but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fiber optic cables, oil pumping mains, and any other services that may be located on the worksite.
- 15.2 We will take all reasonable care to avoid damage to any underground services but you agree to indemnify us in respect of any claims, loss or damage to services that were not located and notified pursuant to clause 15.1.

16. Compliance

- 16.1 Unless otherwise agreed in writing, you will be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the provision of the Works.
- 16.2 You will be solely responsible for the actions of your employees in terms of the Health and Safety at Work Act 2015 ('HSWA').
- 16.3 You will be solely responsible for compliance with the HSWA in respect to your worksite and must advise us prior to commencement of any work of any hazards on your site, further you will co-operate fully with us to enable us to fulfil our obligations under the HSWA.

17. Liability

- 17.1 You must satisfy yourself that the Works are fit and suitable for the purpose for which they are required.
- 17.2 To the maximum extent permitted by law:
 - (a) All warranties and representations in respect of the Works are excluded, including those expressed or implied by law;
 - (b) We will be under no liability whatsoever to you for any indirect loss and/or expense (including loss of profit) suffered by you arising out of any breach by us of these Terms of Trade;
 - (c) You will not be entitled to set off against or deduct any sums owed or claimed to be owed to you by us.

- 17.3 To the maximum extent permissible at law the provisions of the Consumer Guarantees Act 1993 are excluded under these Terms of Trade. In no circumstances will the provisions of the Consumer Guarantees Act 1993 apply to any Works provided for business purposes.
- 17.4 Our liability with respect to all warranties or conditions implied and obligations imported on us by the Contract and Commercial Law Act 2017, the Fair Trading Act 1986 and all other statutes will be fully excluded to the full extent permissible at law, and in the event such liability cannot be excluded will only apply to the minimum extent allowable by law.

18. Personal Properties Securities Act 1999 (“PPSA”)

- 18.1 By assenting to these Terms of Trade, you grant us a security interest, to secure all outstanding payments, over all Works previously supplied by us to you and overall after acquired Works supplied by us to you (or otherwise supplied under your account) and over all of your present and after-acquired property that we have performed Works on or to or in which Works supplied or financed by us have been attached or incorporated.
- 18.2 You undertake to:
- (a) Sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) Not register a financing change statement or a change in demand in respect of the goods (as those terms are defined in the PPSA) without our prior written consent; and
 - (c) Give us not less than 14 days prior written notice of any proposed change in your name and/or any other changes in your details (including but not limited to, changes in your address, facsimile number, trading name or business practice).
- 18.3 Waiver and contracting out:
- (a) To the maximum extent permitted by law, you waive your right to receive a verification statement under section 148 of the PPSA, and you hereby contract out of your rights under the sections referred to in section 107(2) of the PPSA;
 - (b) You agree that nothing in sections 114(a), 133 and 134 of the PPSA will apply to these Terms of Trade and, with our agreement, contract out of these sections;
 - (c) You and we agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as we are not the secured party over all other secured parties in respect of those Goods;
 - (d) You acknowledge and agree that we may do all acts and sign all documents, including the execution of any and all documents as your duly authorised attorney (which appointment is hereby deemed), including the registration of any documents we consider necessary or desirable for the perfection, or enforcement of any security interest we have in any Goods.

19. Notices

- 19.1 Any notices required under these Terms of Trade must be served pursuant to the Property Law Act 2007 and the Companies Act 1993, or by email, in which case notice is deemed to be given on the day of sending. For the purpose of providing notice via our email address, info@leebuilders.co.nz

20. Trusts

- 20.1 If you at any time upon or subsequent to entering into these Terms of Trade, are acting in the capacity of a trustee of any trust (“Trust”) then regardless of whether we have notice of the existence of the Trust, you covenant with us as follows:
- (a) The contract extends to all rights of indemnity which you now or subsequently may have against the Trust and the trust fund;
 - (b) You have full authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of you against the Trust or the trust fund. You will not release the right of indemnity or commit any breach of trust or be a party to any action which may prejudice that right of indemnity;

21. Intellectual Property

- 21.1 Where we have designed, drawn, written plans or a schedule of Works, the copyright in all such designs, drawings, documents, plans and schedules will remain vested in us and are only used by you at our sole discretion. Under no circumstances may such designs, drawings, documents, plans and schedules be used without our prior written consent.
- 21.2 You warrant that all designs, specifications or instructions given to us by you will not cause us to infringe any patent, registered design or trademark in the course of providing Works to you. You agree to indemnify us against any action taken by a third party against us in the event of any such infringement.

22. Dispute Resolution

- 22.1 If a dispute arises between the parties to this contract, then either party must send to the other party a notice of dispute in writing which adequately identifies and provides details of the dispute. Within fourteen (14) days after service of such a notice, the parties will meet in good faith to attempt to resolve the dispute.
- 22.2 At any such meeting, each party may be represented by a person having authority to agree to a resolution of the dispute.
- 22.3 If the dispute cannot be resolved after such a meeting, either party may by further notice in writing, refer the matter to an arbitrator for arbitration pursuant to the Arbitration Act 1996 or its successor.
- 22.4 The arbitration will be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days from the date of the further notice then to be appointed by the President for the time being of Manawatu Branch of the New Zealand Law Society.

23. Privacy Act 1993

- 23.1 You authorize us to:
 - (a) Access, collect, retain and use any information about you (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing your creditworthiness or for the purpose of marketing products and services to you; and
 - (b) Disclose information about you, whether collected by us from you directly or obtained by us from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by you.
 - (c) Use private information collected by us about you to fulfill our obligations and protect our rights under this Agreement.
- 23.2 You will have the right to request from us a copy of the information about you retained by us and the right to request us to correct any information about you held by us.

24. General Provisions

- 24.1 If any provision of this Agreement are invalid, void, illegal or otherwise unenforceable the remaining provisions will remain valid, and enforceable.
- 24.2 Unless otherwise provided in writing, this Agreement will take precedence over any subsequent arrangement, representation or oral agreement.
- 24.3 This Agreement will be interpreted in accordance with and governed by the laws of New Zealand and the Courts of New Zealand will have non-exclusive jurisdiction in respect of all matters between us. The parties hereby nominate the District/High Court at Palmerston North as the initial forum for the determination of any judicial proceedings.
- 24.4 We may license, sub-contract, or assign any rights and obligations under this Agreement without your consent, including any debt owing to us by you. You must not assign all or any of your rights or obligations this Agreement without our written consent.
- 24.5 We reserve the right to amend these Terms of Trade at any time. We will notify you of any amendment to these Terms of Trade which will apply from the date of notification. In the absence of notice these Terms of Trade will continue to apply.
- 24.6 No variation to the Works will be valid unless agreed in writing.
- 24.7 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond our reasonable control.
- 24.8 Any error or omission by you or us in this Agreement, or any quotation will be subject to correction by us.
- 24.9 Failure by us to enforce any of the terms, conditions and obligations in this Agreement will not be deemed to be a waiver of such terms, conditions and obligations by us. Waiver of this Agreement by us will only be effective if given in writing to you by an authorized person. If we waive any of this Agreement the waiver will not affect our other rights under this Agreement and any waiver will only apply for the time specified in writing or if no time is specified will apply until we give notice that such write is no longer waived by us.

25. Unsolicited Electronic Messages Act 2007

- 25.1 You hereby provide your express consent to receiving from us commercial electronic message, in any form pursuant to the Unsolicited Electronic Messages Act 2007.

26. Guarantee and Indemnity

- 26.1 In consideration for Lee Builders agreeing to supply Works to the Customer at my request, I sign this contract in my personal capacity and I personally covenant with Lee Builders as follows:

- (a) I personally, irrevocably, unconditionally and in all circumstances guarantee the payment to Lee Builders of any and all moneys now or which at any time or times in the future become owing by the Customer to Lee Builders.
- (b) I unconditionally indemnify and keep indemnified Lee Builders from and against all claims, losses, actions, damages, costs, charges, expenses (including legal costs and expenses) or other liabilities whatsoever, (whether direct, indirect, consequential or otherwise), that may be suffered, or incurred from any act, default or omission by me or the Customer. This clause will remain in full force and will be effective indefinitely;
- (c) I acknowledge that this guarantee will be a continuing guarantee and that no granting of time, credit or any other indulgence or concession to the Customer by Lee Builders or any waiver, compromise or neglect to me on our part will limit or impair my liability to Lee Builders.
- (d) I acknowledge and agree that as between Lee Builders and myself, I will be deemed to be a principal debtor and jointly and severally liable to Lee Builders and accordingly Lee Builders will be under no obligation to take proceedings against the Customer before me.

SIGNED BY THE CUSTOMER

Customer name:

Signatory name:

Position: