



Terms and Conditions of Trade

The following general terms and conditions are applicable to the provision of building and construction services and the supply of building materials ("the Building Work") by Hazmat Decontamination Limited ("Hazmat Decontamination").

No other terms and conditions or variation(s) to these general terms and conditions will apply unless accepted in writing by an authorised representative of Hazmat Decontamination.

1. INTERPRETATION

- [1] For the purposes of this Agreement "Customer" means the person or entity that has completed the Customer Details section of this Agreement; "Default" means any breach and/or failure by the Customer to meet a payment or comply with any other obligation imposed on the Customer pursuant to this Agreement; "Equipment" means any Goods hired to the Customer by Hazmat Decontamination; "Goods" means any building materials supplied or Equipment hired to the Customer by Hazmat Decontamination; "Parties" means the Customer and Hazmat Decontamination; "PPSA" means the Personal Property Securities Act 1999 and "PPSR" means the Personal Property Securities Register; "Days" means all days including weekends and public holidays; "Agreement" means these terms and conditions of trade.

2. QUOTATION AND ACCEPTANCE

- [1] Hazmat Decontamination will provide the Customer with a written quotation for the Building Work and the quotation will be open for acceptance by the Customer for a period of thirty (30) Days from the date of the quotation.
- [2] Acceptance of the quotation provided by Hazmat Decontamination is deemed to occur when the Customer signs the acceptance form included with the quotation provided to the Customer and the acceptance of the quotation in this manner will constitute a binding contract for the Building Work based on these terms and conditions.
- [3] All quotations are based on costs of materials, labour rates, wages, freight (whether overseas, coastal or inland), foreign exchange, customs duty and primage ruling at the date of quotation and Hazmat Decontamination reserves the right to adjust the same on account of any increases in such costs occurring before acceptance and confirmation whether such are known to Hazmat Decontamination at date of acceptance and confirmation or not. Hazmat Decontamination also reserves the right to increase contract prices on account of any such increases occurring between the dates of acceptance and confirmation and notwithstanding anything hereinbefore contained or implied in this clause Hazmat Decontamination reserves the right to notify the Customer of any overall increase in the contract price of the Building Work occasioned by increases occurring in respect of any or all of the foregoing costs.
- [4] The price quoted for the Building Work will at all times be exclusive of GST.
- [5] GST is payable by the Customer in addition to the price quoted for the Building Work.

3. PAYMENT

- [1] Unless otherwise specified in writing by an authorised officer of Hazmat Decontamination 25% payment is due upon acceptance of this agreement and thereafter for the Building Work on or before seven (7) Days following the date of invoice or the first business day after such date. All payments received will be applied against the oldest outstanding amounts first (if any). The time of payment that the Customer is to pay for the Building Work is an essential term of this Agreement.
- [2] The Customer may not withhold payment or make any deductions from and/or set off any amount against any amount owing without Hazmat Decontamination's prior written consent.
- [3] Hazmat Decontamination may impose a credit limit at its sole discretion, and may alter the credit limit without notice. If the credit limit is exceeded by the Customer, Hazmat Decontamination may refuse to continue with the Building Work for the Customer.

If Hazmat Decontamination at any time deems the credit of the Customer to be unsatisfactory, it may require security for payment and the Customer will make such security available.

- [4] The Customer hereby authorises Hazmat Decontamination to conduct all credit checks and searches of the Customer and its financial and business affairs deemed necessary by Hazmat Decontamination. The Customer will provide all necessary written authorisations for such credit checks and searches as requested from time to time by Hazmat Decontamination.

4. DEFAULT

In the event of Default:

- [1] Hazmat Decontamination may suspend or terminate this Agreement; and
 - [a] any amount owing by the Customer shall immediately become due and payable notwithstanding the due date for payment has not passed.
- [2] If the Customer fails to pay monies on a due date, Hazmat Decontamination may (at Hazmat Decontamination's discretion):
 - [a] charge interest on all overdue accounts at a rate of 5% per month calculated on a daily basis until it is received in full by Hazmat Decontamination but without prejudice to all or any of Hazmat Decontamination other rights and remedies under this Agreement (and any payments received by Hazmat Decontamination will be applied firstly against such interest);
 - [b] revoke, without notice, any previously agreed entitlement to any discount; and
 - [c] Hazmat Decontamination is entitled to recover from the Customer all costs Hazmat Decontamination may incur in attempting to collect the amount owing including full solicitor-client costs and any other monies owing by the Customer to Hazmat Decontamination from time to time whether in relation to this or any other agreement or on any other account whatsoever.
- [3] Hazmat Decontamination may appoint an agent, inspector, receiver and/or manager in accordance with the Auckland District Law Society ("ADLS") General Security Agreement Reference number 6301 and utilise the terms of any Memorandum incorporated into that General Security Agreement or any subsequent amendment to or substitution of that General Security Agreement.

5. PERSONAL PROPERTIES SECURITIES ACT 1999

- [1] Notwithstanding Clause 6 of this Agreement the Parties acknowledge that the Customer grants Hazmat Decontamination a security interest over all Goods supplied to the Customer pursuant to the Building Work.
- [2] Pursuant to clause 6 the Customer:
 - [a] agrees to Hazmat Decontamination registering a financing statement to protect its security interest under these terms and conditions;
 - [d] shall pay on request the cost of registering or subsequently amending the financial statement and costs of attempting to enforce the contract evidenced by this Agreement; and
 - [e] agrees that Sections 125, 126, 127, 129, 131, 132, 133, 134 of the PPSA will not apply to the security interest(s) created by these terms and conditions and waives the right to receive a verification statement under Section 148 of the PPSA.

6. TITLE

- [1] Title to the goods supplied is retained by Hazmat Decontamination and will pass to the Customer only when the Customer has met all indebtedness

to Hazmat Decontamination. The Customer is a fiduciary in respect of any Goods supplied.

- [2] If the Customer:
 - [i] fails to observe or perform any of the terms of this Agreement; or
 - [ii] being an incorporated company ceases or threatens to cease to carry on business or a petition is presented or an order is made or an effective resolution is passed for winding up or if a Receiver is appointed or if in the opinion of Hazmat Decontamination the Customer is unable to pay its debts or is likely to go into liquidation or receivership or if the Customer seeks a reorganisation, restructure arrangement, or seeks administration (voluntary or otherwise), or adjustment or composition of debts; or
 - [iii] being an individual is adjudged bankrupt or in the opinion of Hazmat Decontamination is unable to pay its debts or is likely to be adjudged bankrupt or if the Customer seek a restructure, arrangement or adjustment or composition of debts,

then this Agreement is immediately determined and Hazmat Decontamination by its servants, agents and/or employees may immediately without giving any notice or waiting any time retake possession of the Goods supplied or any other goods supplied by it under any other arrangement which under title in those goods is still retained by Hazmat Decontamination.

- [3] If Hazmat Decontamination is entitled to take possession of the Goods then the Customer hereby gives Hazmat Decontamination, its servants, agents and/or employees the authority to enter and to remain upon any land or premises where the Goods are situated and take possession of Goods without being liable to the Customer or anyone claiming under it for so doing. If the Goods are so repossessed then all moneys payable under this Agreement shall become due together with all costs, expenses, interest and other charges payable hereunder. Hazmat Decontamination retains the right to re-sell repossessed goods.

7. RIGHT TO CANCEL

- [1] In the case of the Customer's death, incapacity, insolvency or modification of partnership, administration or suspension of payments of debts, or failure to make payment on the due date, or if in liquidation, or in the case of a limited liability company there is insolvency, liquidation or the appointment of a Receiver or in the opinion of Hazmat Decontamination the Customer is unable to pay its debts or is likely to go into receivership or liquidation, or for any other reason at the sole discretion of Hazmat Decontamination, shall have the right to cancel this Agreement and every or any other contract made with the Customer or to suspend or discontinue the delivery of the Goods at our option, without affecting the right of Hazmat Decontamination to recover any loss directly or indirectly sustained.
- [2] No cancellation by the Customer of any order or part thereof shall be effective unless and until accepted by Hazmat Decontamination in writing. In the event of any such cancellation being so accepted by Hazmat Decontamination, the Customer shall pay Hazmat Decontamination in full for any charges resulting from design, procurement of materials, work actually carried out and/or services rendered and for any other costs directly and/or indirectly incurred by Hazmat Decontamination unless otherwise agreed by Hazmat Decontamination in writing.

8. TERMINATION

- [1] Hazmat Decontamination may suspend or terminate this Agreement with the Customer for whatever reason subject to seven (7) Days' notice

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in writing as served on the Customer at the last place of business pursuant to either Section(s) 387 or 388 of the Companies Act 1993, and at which time all amounts due by the Customer to Hazmat Decontamination becomes immediately payable. Hazmat Decontamination will not be liable for any losses or liability to the Customer (if any or for whatever reason) from the cancellation or termination of this Agreement.

9. COMMENCEMENT AND COMPLETION

- [1] Any estimate given as to the period for commencement and/or completion of the Building Work, is approximate only but Hazmat Decontamination will use reasonable endeavours to ensure that the Building Work is commenced and completed within the period stipulated.
- [2] Hazmat Decontamination will not be liable to the Customer for any delay or failure to commence and/or complete the Building Work within the period stipulated.

10. REPAIR OF DEFECTS

- [1] Hazmat Decontamination will at its cost rectify any defects in the Building Work which Hazmat Decontamination agrees are defects and which are notified within twenty (20) Days from completion of the Building Work.
- [2] Hazmat Decontamination will use all reasonable endeavours to remedy any agreed defects within a reasonable period of been notified of the same.
- [3] Hazmat Decontamination will not remedy any defects which are attributable to defects:
 - [a] covered by a manufacturer's guarantee that is able to be relied on and enforced by the Customer; and/or
 - [b] caused by work completed by the Customer or a subcontractor of the Customer.

11. HIRE OF EQUIPMENT

- [1] The Customer will:
 - [a] inform Hazmat Decontamination of the intended location and nature of use of the Equipment at the time of hiring the Equipment from Hazmat Decontamination;
 - [b] inform Hazmat Decontamination if the Equipment is intended to be used in a location or manner which is outside its usual or ordinary use and;
 - [c] take proper and reasonable care of the Equipment and return it to Hazmat Decontamination at the end of the hire period (to the place of hire, unless otherwise specified in the Contract) in the same order and condition as at the commencement of the hire (fair wear and tear excepted);
 - [d] carry out any necessary daily servicing of the Equipment at the Customer's own expense;
 - [e] satisfy itself that the Equipment is suitable for the Customer's intended use;
 - [f] use the Equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment;
 - [g] immediately cease operating the Equipment and notify Hazmat Decontamination by telephone if the Equipment is faulty or is not suitable for its intended use;
 - [h] not bring or threaten to bring any claim against Hazmat Decontamination for any loss or damage incurred arising directly or indirectly from the Customer's use of the Equipment;
 - [i] Notify Hazmat Decontamination immediately if the hired Equipment is lost, stolen or damaged and shall follow all reasonable instructions of Hazmat Decontamination;
 - [j] be responsible, and indemnify Hazmat Decontamination, for any loss, theft or damage to the Equipment that occurs from the time the Customer takes possession of the Equipment until it is returned to the possession of Hazmat Decontamination including:
 - [a] in the case of damage, the cost of all repairs to restore the Equipment to the condition it was in at the time of hire;
 - [b] in the case of loss, theft or irreparable damage to the Equipment however caused, the full cost to the Owner of replacing the Equipment; and
 - [k] be responsible for and indemnify the Owner against any loss of revenue suffered by the Owner due to the unavailability of the Equipment for hire due to loss, theft or damage; and
 - [l] not remove, deface or obscure any marks of identification or ownership or registration on the

Equipment.

- [2] The Customer warrants that all persons who use the Equipment shall be competent and qualified to use the Equipment, shall use the Equipment in the manner it was designed to be used, and follow any directions from Hazmat Decontamination, local authorities, codes of practice and/or the manufacturer of the Equipment relating to the use and safety of the Equipment and shall comply with all obligations in relation to the use and control of the Equipment and any person using the Equipment in accordance with the Health and Safety in Employment Act 1992 and all other relevant legislation.
- [3] The Customer shall, upon request by Hazmat Decontamination, advise the Owner of the whereabouts of the Equipment and allow Hazmat Decontamination reasonable time to inspect and test the Equipment and for such purposes the Customer gives irrevocable leave and licence to Hazmat Decontamination to take possession of and/or remove the Equipment, and to enter any premises where the Equipment or any part of the Equipment may be.
- [4] Notwithstanding and further to the provisions of clause 5 the Customer acknowledges that title to the Equipment remains with Hazmat Decontamination at all times and that the hire of the Equipment may create a security interest in the Equipment. If so, this Agreement constitutes a security agreement for the purposes of the PPSA and upon the request of Hazmat Decontamination the Customer will do anything else reasonably required in order to perfect that security interest including (but not limited to) paying all fees and expenses associated with the registration of a financing statement on the PPSR.

12. DISPUTE RESOLUTION

- [1] In the event of any dispute between the Parties in relation to the terms of this Agreement the Parties will first seek to resolve such dispute by promptly giving notice to the other party and in good faith endeavour to resolve the dispute. If the dispute remains unresolved the Parties will first seek a resolution through the use of mediation or other informal method of resolution before pursuing arbitration or resolution through the Courts.
- [2] **Disputes:** Any dispute, difference or question arising between the Parties about:
 - [a] **Interpretation:** the interpretation of this Agreement;
 - [b] **Matters arising:** anything contained in or arising out of this Agreement;
 - [c] **Rights, Liabilities or Duties:** the rights, liabilities or duties of the Parties; or
 - [d] **Other matters:** any other matter touching on the relationship of the Parties under this Agreement (including claims in tort as well as in contract);will be referred to the arbitration of a single arbitrator under the Arbitration Act 1996 or any Act in substitution thereof. However, this provision shall not prohibit any action at law or any other proceedings to recover any moneys due or owing or to gain or regain possession of any Goods pursuant to the terms of this Agreement.
- [3] **Arbitrator:** The Parties must try to agree on the Arbitrator. If they cannot agree, the President for the time being of the New Zealand Law Society (or his or her nominee) will, on either party's application, nominate the arbitrator.
- [4] **Action at Law:** The Parties must go to arbitration under this section before they can begin any action at law (other than an application for injunctive relief).

13. NO WARRANTY

- [1] Hazmat Decontamination gives no warranty on behalf of any manufacturer for any of the Goods supplied to complete the Building Work, however, where possible, Hazmat Decontamination will pass on to the Customer the benefit of any warranty received from any manufacturer.
- [2] Any terms, conditions and/or warranties, whether statutory or otherwise, relating to the quality and/or fitness for purpose of the Goods supplied to complete the Building Work are excluded to the maximum extent permitted by law.

14. LIMITATION OR EXCLUSION OF LIABILITY

- [1] To the maximum extent permitted by law, Hazmat Decontamination will be under no liability whatsoever to the Customer for any indirect, special, incidental, consequential or exemplary damages or losses suffered by the Customer arising

out of the Building Work whether actionable in contract, tort (including negligence), equity or otherwise.

- [2] Hazmat Decontamination accepts no liability of any kind whatsoever for any accident, loss or damage caused to any persons (death, incapacity or whatsoever) and/or property however arising out of the failure of the Building Work.
- [3] In the event that Hazmat Decontamination is found liable to the Customer for whatever reason as a result of the Building Work, Hazmat Decontamination's liability is limited to the lesser of:
 - [a] the price of the Goods supplied complained of;
 - [b] the cost of completing any necessary repairs or remedial work; or
 - [c] the actual loss or damage incurred by the Customer.

15. INDEMNITY

- [1] The Customer indemnifies Hazmat Decontamination against any legal proceedings and any costs involved, resulting from any acts or omissions of the Customer in using any of the Goods provided by Hazmat Decontamination, or where Hazmat Decontamination becomes liable or suffers any loss due to any material breach of the terms and conditions of this Agreement by the Customer.

16. FORCE MAJEURE

- [1] Hazmat Decontamination will not be liable for any delay or failure in the performance of any of the obligations imposed by this Agreement, provided that such failure will be occasioned beyond the reasonable control and without the fault or negligence of Hazmat Decontamination provided that this clause will not extend to excuse the consequences of insolvency or financial difficulty.

17. NOTICES

- [1] Every notice given under the terms of this Agreement will be sufficiently given if delivered personally, posted, emailed, or faxed to the intended recipient at his/her last known email address, or facsimile number, or residential address or to the last known email address or facsimile number of that business, or to the last known email address of the registered office of the company pursuant to either section(s) 387 of the 388 of the Companies Act 1993.

18. INDIVIDUAL LIABILITY AND GUARANTEES

- [1] Where the Customer comprises more than one person carrying on business in partnership, each and every individual partner will be jointly and severally liable to Hazmat Decontamination in respect of all or any indebtedness or liability of the Customer arising out of this Agreement.
- [2] Where the Customer is a limited liability company or other corporation, each of the directors thereof will, upon demand, and in writing interpose and bind themselves as sureties and co-principal debtors with the Customer, jointly and severally, for the due and principal payment of all monies and performance obligations due by the Customer arising out of this Agreement.

19. MISCELLANEOUS

- [1] **Assignability:** The Customer will not assign or otherwise transfer or encumber its rights or obligations under this Agreement except with the prior written consent of Hazmat Decontamination.
- [2] **Entire Agreement:** This Agreement constitutes the sole understanding of the Parties and supersedes all prior understandings, written or oral, which will be of no further force or effect.
- [3] **Applicable Law:** This Agreement will be deemed to be made in New Zealand and will be construed and governed by the laws of New Zealand.
- [4] **Waiver:** No waiver of any provision of this Agreement will serve as a waiver of any other provision of this Agreement and Hazmat Decontamination will not have waived or deemed to have waived any provision of this Agreement unless such waiver is in writing and exercised by Hazmat Decontamination.
- [5] **Counterparts:** This Agreement may be executed in counterparts (which may be by facsimile and/or email copies) all of which, when taken together, will constitute one document.
- [6] **Independent Legal Advice:** The Customer accepts that Hazmat Decontamination has advised the Customer to obtain independent legal advice prior to the signing of this Agreement, and that the Customer has been given every opportunity and a reasonable time to do so.

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Customer Details:

Customer: Public Company / Private Company / Partnership / Sole Trader / Private Client (Please Circle Entity Type)

Person making application: In the capacity as:

Company Name:

Trading as:

Company Number: Date Company or Business Established:

Delivery/Physical Address:

Postal Address: Postcode:

Business Contact Details: Phone: Fax: Email: Mobile:

Premises: Owned / Rented / Leased / Other Landlords name and contact details:

Account Queries contact: Accounts phone: Accounts Email:

Solicitor: Accountant:

Bankers: Branch:

Estimated monthly purchases \$ Credit Limit Requested \$

Please circle preferred account payments to Hazmat Decontamination: Direct Debit / Internet Banking / Credit Card / Cheque / Cash

Director(s)/Authorised Person(s)

Name: Date of Birth: Drivers Licence Number:

Home Phone: Mobile: Email:

Residential Address:

Name: Date of Birth: Drivers Licence Number:

Home Phone: Mobile: Email:

Residential Address:

Name: Date of Birth: Drivers Licence Number:

Home Phone: Mobile: Email:

Residential Address:

Shareholders/Owners

Name: Date of Birth: Drivers Licence Number:

Home Phone: Mobile: Email:

Residential Address: Number of Shares Held:

Name: Date of Birth: Drivers Licence Number:

Home Phone: Mobile: Email:

Residential Address: Number of Shares Held:

Name: Date of Birth: Drivers Licence Number:

Home Phone: Mobile: Email:

Residential Address: Number of Shares Held:

References

Name: Phone:

Name: Phone:

Name: Phone:

Privacy Act 1993

I/We irrevocably authorise any person or company to provide you with such information as you may require in order to sufficiently determine my/our creditworthiness under this Agreement.

I/We also authorise you to provide to any third party to whom I/we have given my/our prior consent details of the (proposed) Building Work.

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Terms of Trade

I/We the Customer acknowledge that my right to undisturbed possession of the Building Work is subject to full payment under this Agreement and any other costs and charges as stipulated in the Terms of Trade and, by my signature, I acknowledge such provisions and my understanding of the full effects and implications of these Terms of Trade.

Independent Legal Advice

I/We accept that Hazmat Decontamination has advised me/us that prior to executing this Agreement and in respect of the Terms of Trade with Hazmat Decontamination, that I/we should obtain independent legal advice and that I/we have been given every opportunity and a reasonable time to do so.

Company Authority (to be completed by Customer if company)

I/We confirm that I/we have the consent and authority of the company to act on its behalf and to bind the company to this agreement; and/or, I/we warrant to Hazmat Decontamination that as agent of the company, I am authorised to enter into this Agreement on the company's behalf.

Name of Company:			
I, [print full name]		in capacity as	
Signature of Applicant:		Dated:	

Personal Guarantee (compulsory for all Customers):

I/we unconditionally and personally guarantee the payment of all accounts by the Customer, including interest and all enforcement costs and charges as principal debtor[s] and my/our liability as such shall remain to be in full force and effect until full payment under this Agreement is received by Hazmat Decontamination.

Name of Guarantor:			
I, [print full name]		of [residential address]	
Signature of Guarantors:		Dated:	
Witnessed by [print full name]			
Signature of Witness:		Dated:	