

Terms and Conditions of Trade

In these Terms & Conditions:

"Account" means the Customer's account with the Company;

"Company" means Infinite Mechanical Limited and includes any employees or agent;

"Customer" means the customer specified in these Terms and Conditions or any person acting on behalf of or with the implied authority of the Customer;

"Goods" means any and all goods supplied by the Company to the Customer from time to time including goods described on any invoice or other form provided by the Company to the Customer, and may include Services;

"Guarantor" means the person who has agreed to be responsible as a principal debtor for the debts due by the Customer to the Company;

"Price" means the price payable to the Company by the Customer for the Works, as set out in the invoice or as agreed in writing between the Company and the Customer;

"Secured Goods" has the meaning set out in clause 8.6 and 8.7.

"Services" means any and all services supplied by the Company to the Customer including any Goods supplied as part of the services and any advice or recommendations given regarding the Goods, their installation or application;

"Terms and Conditions" means the terms and conditions contained in this document;

"Works" means the Goods supplied and/or Services to be performed, by the Company as described on any invoice, quotation or other form provided by the Company to the Customer.

1. **Acceptance**

1.1 The Customer is deemed to have accepted these Terms and Conditions when an order is placed by the Customer for the Works by the Company. These Terms and Conditions are binding on the Customer and may only be altered or amended by written agreement between the Company and the Customer.

1.2 The Customer expressly acknowledges and agrees that the Company supplies the Works to the Customer on these Terms and Conditions only and not on the terms stated on any other form given to the Customer by the Company.

1.3 Where more than one person accepts these Terms and Conditions as Customer, each person will be jointly and individually liable for the debts of the Customer to the Company.

1.4 Where the Customer is a company or trust, then in consideration of the Company supplying the Works to the Customer, the director(s) or trustee(s) (as the case may be) of the Customer agree that they will personally guarantee the obligations of the Customer for any payment due by the Customer to the Company as principal debtor.

2. **Price and Payment**

2.1 The Customer will pay to the Company on a time and materials basis, invoices issued for the Works undertaken in accordance with this clause 2, unless prior alternative arrangements are made and agreed in writing.

2.2 The Price stated in any quotation or invoice is:

2.2.1 based upon current material prices, labour charges, freight costs, plant hire costs applying at the date of the quote or invoice, unless otherwise stated;

2.2.2 exclusive of Goods and Services tax (GST) and other taxes or duties applicable, except to the extent that such taxes or duties are expressly included in the Price;

2.2.3 inclusive of time spent acquiring any materials necessary to carry out the Works and a vehicle services charge.

2.3 The Company may (after giving notice to the Customer) alter the Price:

2.3.1 if the Customer varies the Works to be provided by the Company;

2.3.2 to take account of any variation in the costs of the Works which are beyond the reasonable control of the Company and which increase the cost of the Works by more than 10% of any quoted Price. For the avoidance of doubt this includes where the scope of the Works may change due to the specifications for the Works required being undiscoverable until the Works have commenced.

2.4 The Customer acknowledges and agrees that it will pay for Goods procured in advance by the Company when invoiced, regardless of whether the Works are completed.

2.5 The Company may require the Customer to pay a deposit. The amount of any deposit will be specified in any quotation or invoice issued by the Company and will be due and payable immediately on acceptance by the Customer.

2.6 Time for payment is of the essence and will be specified on the quotation or invoice issued by the Company. The Customer will pay the Price as recorded in the invoice by the 20th of the month following the date of any invoice issued by the Company or by mutual agreement.

2.7 Payment will be made by cash, direct credit, credit card (payments made by credit card will incur service charges) or by any other means agreed to by the Company.

3. **Validity of Payment**

3.1 The Customer acknowledges that:

3.1.1 all payments made to the Customer's account with the Company are in the ordinary course of the Customer's business;

3.1.2 all payments to the Customer's account are received by the Company on the reasonably held belief that those payments are valid unless the Customer advises otherwise in writing; and

3.1.3 by accepting any payments on or after the due date for payment the Company has altered its position in reliance on the validity of those payments.

4. **Delivery**

4.1 Delivery of the Works to the Customer will occur, at the discretion of the Company, when the Customer:

4.1.1 takes possession of the Works at the Company's address; or

4.1.2 takes possession of the Works at the Customers nominated address; or

4.1.3 a third party nominated by the Customer takes possession of the Works.

4.2 The Customer must make all arrangements necessary to take delivery of the Works when they are tendered for delivery, failing which, delivery will be deemed to have been made to the Customer at the Company's address.

4.3 Where the Customer directs the Company to transfer the Works to a carrier specified by the Customer, the carrier will be deemed to be the Customer's agent and the costs of carriage and any insurance which the Company reasonable incurs will be reimbursed by the Customer (without any set-off or deduction) on the date for payment of the Price.

4.4 The Company will not be liable for any loss or damage of any kind due to the failure of the Company to deliver the Works, promptly or at all, where such failure is due to circumstances beyond the control of the Company.

4.5 Any failure by the Company to deliver the Works will not entitle either party to treat this contract as at an end. If the Works are damaged or lost, the Company will lodge an insurance claim with the relevant insurer. If the loss or damage to the Works is caused by the Customer in a manner that invalidates the insurance claim, then the Customer will be liable for all costs.

5. **Disclaimer by Customer**

5.1 The Customer disclaims any right to avoid or cancel this contract, sue for damages or claim compensation arising from any misrepresentation made to the Customer by an employee or agent of the Company.

5.2 The Customer acknowledges and agrees that:

5.2.1 if loss or damage arises out of any materials supplied by the Customer or the Company that have been modified by the Customer, the Customer will be liable for all such loss or damage; and

5.2.2 the Company will not be liable for any loss or damage however caused as a result of any works performed by the Customer and the provisions of clause 9 (Warranty) will not apply in relation to any materials supplied or work carried out by the Customer.

6. **Defects and Returns**

6.1 The Customer must inspect the Works on delivery and notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote within seven (7) days of such delivery. The Customer must allow the Company an opportunity to inspect the Works within a reasonable time after delivery if the Customer believes the Works are defective in any way. If the Customer does not allow the Company to inspect the Works, they will be conclusively presumed to have been delivered in accordance with these Terms and Conditions and free from any defect or damage.

6.2 Non stocklist items or Works which have been made to the Customers specifications or requirements will not be accepted for credit or return under any circumstances.

6.3 Where the Company agrees that the Works are defective and the Customer is entitled to reject them, the Company will, at the Company's discretion, either replace or repair the Works provided that:

6.3.1 the Customer has complied with the provisions of clause 6.1; and

6.3.2 the Works are returned to the Company at the Customers expense; and

6.3.3 the Works are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new conditions as is reasonably possible in the circumstances.

7. **Risk**

7.1 The Customer acknowledges that all risk in the Works passes to the Customer on delivery regardless of whether or not the Company retains ownership of the Works.

7.2 If any Works are damaged or destroyed after delivery to the Customer, but before ownership passes to the Customer, the Company will be entitled to receive all insurance proceeds

Terms & Conditions of Hire

- payable in respect of the Works. This applies whether or not the Price has become payable under these Terms and Conditions. These Terms and Conditions by the Company will be sufficient evidence of the Company's rights to receive any insurance proceeds without the need for any person dealing with the Company to make further enquiries.
8. **Title or Ownership**
- 8.1 The Customer and the Company agree that ownership of the Works does not pass to the Customer until:
- 8.1.1 all amounts owing by the Customer to the Company have been paid in full; and
- 8.1.2 the Customer has satisfied all its other obligations to the Company in respect of all agreements between the Company and the Customer.
- 8.2 The Customer agrees that until the Company has received payment and all other obligations of the Customer are satisfied, the Works, or any proceeds of the sale of the Works, will be kept separate.
- 8.3 Where the Company receives payment from the Customer in any form other than cash, the form of payment tendered by the Customer will not be deemed to be payment in full until it has been cleared, honoured or recognised and until then the Company's ownership in the Works will continue.
- 8.4 If the Company's goods become mixed with or incorporated in any goods, property, machinery, vehicles or materials in such a way that they cease to exist as separate goods, the original ownership of the new goods created by that mixing will vest immediately on creation in the Company as co-owner of the new goods with the owner of any other materials which become part of the new goods. The co-ownership will be calculated proportionally to the value of the various component materials. The Company's ownership of the new goods is otherwise on the same terms of ownership of the goods originally supplied.
- 8.5 If the Customer is in default under these Terms and Conditions or if one of the events described in clause 10.1.1 occurs, the Customer will at the Company's request:
- 8.5.1 re-deliver the Works to the Company or do anything reasonably necessary to allow the Company to retake possession of them;
- 8.5.2 instruct any third parties who owe money in respect of the Works to pay that money directly to the Company; and
- 8.5.3 make any records available which may assist the Company to trace the proceeds of sale of the Works.
- 8.6 The Customer grants a security interest to the Company in respect of:
- 8.6.1 the Works;
- 8.6.2 any new goods in terms of clause 8.4; and
- 8.6.3 any other goods or personal property owned by the Customer that have been installed or worked on by the Company or which are required for the completion of the work, together the "Secured Goods".
- 8.7 For the avoidance of doubt, "Secured Goods" includes any vehicle that the Company has completed Works on and the Customer grants a security interest to the Company in respect of such vehicle.
- 8.8 Until such time as ownership of the Secured Goods passes from the Company to the Customer, the Company may give notice in writing to the Customer to return the Secured Goods to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Secured Goods will cease.
- 8.9 If the Customer fails to return the Secured Goods to the Company then the Customer irrevocably authorises the Company to enter upon and into any land or premises where the Secured Goods are situated for the purpose of repossession. The Company will not be liable for any costs, expenses, damage or loss of any kind suffered by the Customer as a result of repossession.
9. **Warranty by the Company**
- 9.1 The Company warrants to the Customer that if any defective workmanship or service provided by the Company becomes apparent and is reported to the Company within six (6) months of the date of completion of the Works (time being of the essence) then the Company will either replace or remedy the defective workmanship provided that such warranty:
- 9.1.1 does not cover any defect or damage which may be caused or partly caused by or arises through:
- 9.1.1.1 any failure on the part of the Customer to properly maintain the Goods;
- 9.1.1.2 any failure on the part of the Customer to follow any instructions or guidelines provided by the Company;
- 9.1.1.3 any use of the Goods otherwise than for any application specified on a quote or order form;
- 9.1.1.4 the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
- 9.1.1.5 fair wear and tear, any accident, or force majeure.
- 9.1.2 will immediately cease and be of no effect if any workmanship is repaired, altered or overhauled without the Company's consent; and
- 9.1.3 the Company will not be liable to compensate the Customer for any delay in properly assessing the Customer's claim or remedying the workmanship claimed to be defective.
- 9.2 In the case of Goods not manufactured by the Company, any warranty will be the current warranty provided by the manufacturer of the Goods. The Company will not be liable for anything other than the express conditions specified in the manufacturer's warranty.
- 9.3 If the Company breaches these Terms and Conditions, the remedies of the Customer will, at the option of the Company, be limited to repair or replacement of the Works. Under no circumstances will the liability of the Company exceed the Price charged for the Works.
- 9.4 The Company will not be liable to the Customer for any indirect losses, damages or expense (including loss of profit) whatsoever suffered by the Customer arising from a breach by the Company of these Terms and Conditions.
10. **Cancellation**
- 10.1 These Terms and Conditions (including any unperformed obligations of the Company) may be terminated by the Company giving ten (10) working days' written notice to the Customer that no further Works will be supplied due to:
- 10.1.1 the Customer's default under these Terms or Conditions; or
- 10.1.2 the Customer becoming insolvent; or being subject to the appointment of a receiver, manager, liquidator or statutory manager; or committing an act of bankruptcy or making a scheme of arrangement with its creditors; or being unlikely to be able to meet its obligations to the Company (in the opinion of the Company).
- 10.2 On giving notice the Company will promptly repay to the Customer any sums paid in respect of the Price for those Works that have not been completed. The Company will not, under any circumstances, be liable to the Customer for any loss or damage whatsoever arising from such cancellation.
- 10.3 The Customer may cancel delivery of the Works but only with the prior written consent of the Company. If the Customer cancels delivery of the Works, the Customer will be liable for any costs incurred by the Company up to the time of cancellation. The Customer will pay the Company any costs incurred by the Company.
- 10.4 The agreements of the parties will not merge with termination under this clause.
11. **Health and Safety**
- 11.1 Where the Customer owns or occupies the property at which the Works are being carried out by the Company, the Company will take all practical steps to comply with the Health and Safety at Work Act 2015 and:
- 11.1.1 provide and maintain a safe working environment;
- 11.1.2 identify significant hazards and have proper procedures for dealing with emergencies that may arise; and
- 11.1.3 maintain a register of accidents and serious harm.
- 11.2 If there are any additional costs by the Company to comply with the relevant Health and Safety provisions, these costs will be apportioned on a pro rata basis per the benefit to each party.
12. **Personal Property Securities Act 1999 ("PPSA")**
- 12.1 Upon acceptance of these Terms and Conditions as provided above the Customer acknowledges and agrees that:
- 12.1.1 these Terms and Conditions constitute a security agreement for the purposes of the PPSA; and
- 12.1.2 for so long as the parties carry on business together, the Company takes a security interest in the Secured Goods.
- 12.2 The Customer undertakes:
- 12.2.1 to sign any documents and provide such complete, accurate and up-to-date information which the Company reasonably requires to register a financing statement which is a registration of the security interest on the Personal Property Securities Register; to indemnify the Company for all expenses incurred in registering a financing statement on the Personal Property Securities Register, or in releasing any Secured Goods;
- 12.2.2 not to register a financing statement or a change demand over the Secured Goods without the prior written consent of the Company;
- 12.2.3 to give the Company not less than fourteen (14) days prior written notice of any proposed change in the Customer's name or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
- 12.2.4 to immediately advise the Company of any material change in its business practices for selling the Secured Goods which may result in a change in the nature of proceeds derived from such sales.

Terms & Conditions of Hire

- 12.3 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms and Conditions.
- 12.4 The Customer agrees to waive its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer unconditionally ratifies any actions taken by the Company under clauses 12.1 to 12.5.
13. **Consumer Guarantees Act 1993**
- 13.1 If the Customer is acquiring the Works from the Company for the purposes of or use within a business, then the Customer understands that they are not defined as a consumer under the Consumer Guarantees Act 1993 and therefore all rights and remedies available under the Consumer Guarantees Act do not apply.
14. **Privacy Act 1993**
- 14.1 For the purpose of facilitating the efficient running of the Company's business, the Customer (and the Guarantor/s if separate to the Customer) authorises the Company:
- 14.1.1 to collect all information it may require from any third parties and authorises those third parties to release that information to the Customer;
- 14.1.2 to hold all information given by the Customer or any third parties to the Company; and
- 14.1.3 to use that information, including giving information to any other person to facilitate collection of debts from the Customer.
- 14.2 The information will be collected, held and used on the condition that:
- 14.2.1 it will be held securely at the Customer's registered office and/or place of business;
- 14.2.2 it will be accessible to any of the Company's employees and agents who need access to it for the efficient running of the Company's business;
- 14.2.3 the Customer may request access to and correction of it at any time;
- 14.2.4 the Company will destroy or return the information to the Customer if requested.
15. **Default and Consequences of Default**
- 15.1 The Company may charge interest on overdue invoices at a rate of seven percent (7%) per annum calculated daily from the date when payment becomes due on the amount overdue, including interest charged on a compounding basis, until the actual date of payment and such compounding interest will accrue at the stipulated rate after as well as before any judgment.
- 15.2 If the Customer fails to meet payment of any invoice when due, the Customer will also be required to pay the Company's costs and disbursements including on a solicitor and own client basis and in addition all of the Company's nominee costs of collection.
- 15.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Works to the Customer and any of its other obligations under these Terms and Conditions.
- 15.4 In the event that:
- 15.4.1 any amount payable by the Customer to the Company becomes overdue;
- 15.4.2 it becomes apparent that the Customer is unable to meet its payments as they fall due;
- 15.4.3 the Customer convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
- 15.4.4 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer,
- then all amounts owing to the Company, whether or not due for payment, will immediately become due and payable to the Company and the Company will be entitled to cancel any order of the Customer in addition to and without prejudice to any other remedies available to the Company whether at law or otherwise.
- 15.5 Where the Customer fails to make payment when due, the Customer irrevocably authorises the Company to enter upon and into any land or premises where the Secured Goods are situated for the purpose of repossession. The Company will not be liable for any costs, expenses, damage or loss of any kind suffered by the Customer as a result of repossession.
- 15.6 If the Company takes possession of the Secured Goods or the proceeds and after deduction of all money the Customer owes to the Company (including any interest due and any expense incurred by the Company in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, the Company will pay that surplus to the Customer.
16. **Company's Rights to Dispose of Unpaid Goods**
- 16.1 Where the Company:
- 16.1.1 retains possession or control of the Works; and
- 16.1.2 payment of the Price is due to the Company; and
- 16.1.3 the Company has made demand in writing of the Customer for payment of the Price in terms of this contract; and
- 16.1.4 the Company has not received the Price, then regardless of whether title in the Works has passed to the Customer or remains with the Company, the Company may dispose of the Works and may claim from the Customer any loss incurred (including any costs) by the Company on such disposal.
17. **Dispute Resolution**
- 17.1 If the parties are unable to resolve any question or dispute of difference arising under this agreement by discussion and negotiation, the dispute must be submitted to the arbitration of a single arbitrator agreed on by the parties.
- 17.2 If the parties cannot agree on an arbitrator, then the arbitrator is to be nominated by the president of the New Zealand Law Society.
- 17.3 The Company has the right to refer any dispute to the Disputes Tribunal for determination.
18. **General**
- 18.1 The headings and table of contents are inserted for convenience and reference only and will not affect the meaning or interpretation of this agreement.
- 18.2 If any one or more of the provisions contained in these Terms and Conditions are for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of these Terms and Conditions.
- 18.3 These Terms and Conditions (and any schedules to it) constitute the entire agreement between the Company and the Customer and supersede all prior agreements, understandings, negotiations, representations and discussions, whether oral or written, of the parties.
- 18.4 The Company makes the representations and warranties set forth in clause 9 and no others. Any and all implied warranties are expressly excluded.
- 18.5 No supplement, modification or waiver of these Terms and Conditions will be binding unless executed in writing between the parties. No waiver of any of these Terms and Conditions will be deemed to constitute a waiver of any other term (whether or not similar), nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- 18.6 All Works supplied by the Company are supplied subject to the laws of New Zealand and the Company takes no responsibility for changes in the law that affect the Works supplied.
- 18.7 Neither party will be liable for any default due to any force majeure or other event beyond the reasonable control of either party.
- 18.8 The Customer will not set off against the Price amounts due from the Company.
- 18.9 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 18.10 The Company reserves the right to review these Terms and Conditions at any time and from time to time. Following a review, any changes in the Company's Terms and Conditions will take effect from the date on which the Company notifies the Customer in writing of such changes.