

### 1. Acceptance

- 1.1. These terms constitute the terms and conditions between us, the Supplier of goods and services, and you, the Client. Engaging us to carry out Work or acceptance of a Quote from us is acceptance by you of these terms. These terms apply to all goods and services provided by us to you from time to time (unless otherwise agreed in writing).

### 2. Price

- 2.1. Where a Quote has been given for work to be performed, that Quote remains valid for 14 days (unless otherwise stated on the Quote). We may withdraw that quotation at any time before you accept that Quote in writing.
- 2.2. The following rates apply where work is to be charged on the basis of time and materials (charge-up basis), and for the purpose of calculating any variation to quoted work under clause 9:

**Labour**                      *Hourly rate for Mike as the supervisor \$68*  
                                     *Hourly rate for small machinery (eg, bobcat,*  
                                     *chainsaw and other machinery) \$80 per hour*  
                                     *Hourly rate for standard work \$60 per hour*

**Materials**                *Priced at RRP plus a margin of 15%*

**Vehicle charges** *\$1.50 per kilometre travelled. Travel time will be charged at the labour rates above.*

- 2.3. Spoil and rubbish will be left on Site. If you require us to remove soil and rubbish, this will be charged as a Variation at the following rates:  
**Green waste and hard fill**    *\$150 per tonne*  
**Rubbish**                      *\$430 per tonne. Minimum charge of \$100.*

### 3. Our responsibilities

- 3.1. We will carry out the Work with reasonable skill and care, in accordance with the plans and specifications (if any), the Building Act 2004, the Building Code and any building consents issued in respect of the Work.
  - 3.2. We will remedy any defect in the Work which you notify to us in writing within 12 months of completion of the Work (if section 362Q of the Building Act 2004 applies to the contract) or within 90 days of completion of the Work otherwise. Your notice must be sufficiently detailed to clearly identify what Work is claimed to be defective. We are not liable for any defect within reasonable tolerances, failure to achieve standards of finish or detail beyond what is required by the contract (subject to consents and Variations) and for any defect caused by or arising out of the actions of any person outside our control, for any faults in the performance or durability of materials supplied by you, fair wear and tear, or failure to maintain the Work.
  - 3.3. We shall have a reasonable opportunity to rectify any defects identified and you may not engage anyone else to rectify the defects until a reasonable time has elapsed and you have given us at least 30 Working Days' notice of your intention to engage someone else. If you engage someone else to rectify the defects when you are not entitled to do so, then without prejudice to our other rights and remedies, to the maximum extent permitted by law, we will be immediately discharged from any further obligation or liability in respect to the Work.
  - 3.4. These terms do not limit the implied warranties as set out in s362I to s362K of the Building Act 2004.
- ### 4. Timing
- 4.1. Subject to receiving sufficient access as set out below, we will commence the Work on the Start Date, and complete the Work by the Completion Date, in each case subject to any extensions of time to which it is entitled under clauses 4.2 and 4.3. If it is necessary to work outside ordinary working hours to meet your completion target or due to any other circumstances outside our control, you will be liable for any extra cost incurred.
  - 4.2. We shall not be liable for any delay in carrying out the Work due directly or indirectly to circumstances reasonably outside our control, including disputes with subcontractors, bad weather, force majeure, accidents, fire, shortage of labour and/or materials, labour disputes, variations, failure of suppliers to deliver, or acts of any government, territorial authority or similar body.

- 4.3. If an extension of time is required to the Completion Date due to any of the above reasons or any other reason beyond our reasonable control, we shall provide written notice to you of any such extension reasonably promptly after the delay becomes apparent, together with details of the new Completion Date.

### 5. Installation

- 5.1. You shall give us access to the Site and provide proper facilities for carrying out the work, within a reasonable time after acceptance of the Quote or at a date notified by you and agreed by us in writing. Without limitation, you will ensure that, before we are due to start Work, the Site is tidy and all pot plants and other items are removed, and that there is a sufficient parking area of 4 metres by 12 metres available for our trailer. If the Site is not ready for us, we will tidy the Site to these requirements, but our time involved will be charged as a Variation.
- 5.2. You will provide us with access to water and power on Site, accessible within 20 metres of where the Work is to be carried out. If toilet facilities are not provided for us on Site, the time involved to access such facilities (including packing up and removing the trailer each time) will be charged as a Variation.
- 5.3. You are responsible for ensuring that you have sufficient legal entitlement to the Site to allow the Work to be carried out, for surveying the Site and advising us of boundaries and the specific location of underground services and utilities.
- 5.4. You shall advise us of any particular hazards relating to the Site, and take all practicable steps to ensure your own safety throughout the Work and cooperate fully in implementing our health and safety and environmental policies and procedures and obligations under the relevant health and safety legislation.
- 5.5. If any materials, plant, and equipment required for the Work expressed to be 'client supplied' or 'owner supplied', you are responsible for ensuring that such materials comply with the Building Code and are fit for purpose, and all plant and equipment complies with all health and safety legislation, codes and requirements, and shall sign a declaration and indemnity in a form required by us to this effect. For the avoidance of doubt, any owner-supplied materials which are faulty shall not constitute a defect in the Work under clause 3.2.

### 6. Consents

- 6.1. You are responsible for obtaining all necessary consents for the Work (including for any Variations) and for obtaining a code compliance certificate (if required) when the Work is complete. To enable us to comply with our obligations above, we may require that you provide a copy of all necessary consents before commencing the Work or any Variation. Where a consent is required and you have failed to obtain it, we may lodge an application for the consent as your agent and at your expense.

### 7. Plans and specifications

- 7.1. We are entitled to rely on the accuracy of and shall not be obliged to check any plans, specifications or other information supplied by you.

### 8. Payment

- 8.1. We will issue progress payment invoices on a regular basis. Invoices are payable in full 7 days from the date of issue of the invoice. If the invoice is or is accompanied by a payment claim under the Construction Contracts Act 2002, any payment schedule under that Act must be provided within 7 days from the date of the invoice.
- 8.2. If the Quote provides for invoices to be submitted on certain milestones as set out in the Quote, and the Work is delayed or suspended for any reason outside our control, we may issue an invoice at the time a relevant milestone would otherwise have been achieved.
- 8.3. Any amount which is not paid when due will incur interest at the rate of 2% per month compounding daily on the outstanding balance (both before or after any judgement, and in addition to any other rights and remedies), and, in addition, we may charge an administration fee of \$100 for any unpaid invoice. We also reserve the right to claim the costs of recovering any debt.

**8.4.** Any deposit paid shall be held by us and applied towards payment of the final invoice. If the final invoice is less than the deposit, we will refund the balance to you on issuing the final invoice. If the Quote provides for a deposit, and the deposit is not paid in full before the Work is due to start, we may at our option and without further notice suspend and/or cancel the contract for the Work, without prejudice to any other rights and remedies. No materials will be ordered before the deposit is paid, and any delay arising from a delay in ordering the materials due to non-payment or delayed payment of the deposit will be charged as a Variation.

## **9. Variations**

- 9.1. You may request variations to the Work, but may not (unless otherwise agreed in writing) request a Variation omitting or reducing the Work to be performed. With the exception of the Variations set out in clause 9.2, all variations must be in writing and contain the following:
- (a) A description of the work required under the Variation;
  - (b) Any required amendments to the consents as issued or any additional approvals, consents or licences that will be required;
  - (c) Any agreed adjustment to the Contract Price and/or the Completion Date for the Work.
- 9.2. We are entitled to claim a Variation for:
- (a) any emergency works required for health and safety or environmental reasons;
  - (b) additional work and/or changes to the Work caused by any consent requirements;
  - (c) unforeseen physical conditions, substitutions of any materials, wages and price changes; or
  - (d) any increase in costs arising from a failure or delay on your part in complying with these terms.

No allowances have been made in the Contract Price for the handling of hazardous substances (including asbestos), and we are also entitled to claim a Variation for any such costs.

- 9.3. All Variations claimed under clause 9.2 shall be calculated at the rates set out in clause 2.3.

**10. Subcontractors:** We may sublet the whole or any portion of the Work. The following subcontractors are engaged on an 'all care, no responsibility' basis, and we are not liable for any damage to driveways, paths or services arising from any of the following:

- Concrete mixers
- Stump grinding
- Drainage services

## **11. Insurance**

- 11.1. All good and materials are at your risk while on the Site or under your control. You are responsible for insuring the Work (and we may require that proof of such insurance is provided).
- 11.2. We hold public liability insurance against liability for loss or damage to any property, or injury or death or illness which arises from carrying out the Work. However, our public liability insurance does not cover external contractors who we might engage for specialist services in respect of the Work.

## **12. Our property on Site**

- 12.1. You acknowledge that:
- (a) the legal, equitable and beneficial ownership and title to any plant, equipment or materials brought onto the Site by us remains vested in us at all times;
  - (b) title in all materials supplied as part of the Work remains vested in us until all amounts owing to us have been paid in full.
- 12.2. To secure such obligations, for the purposes of the Personal Property Securities Act 1999 (PPSA), you agree that a security interest is granted in the property described in clause 12.1 (and all proceeds of that property). We may apply all payments in such manner as is desirable to preserve any purchase money security interest in that property. Nothing in section 116, 120(2), 121, 125 to 127, 129, 131, 133 and 134 of the PPSA applies to the security interest, and you waive the right to receive a verification statement in respect of any security interest.

## **13. Signage and photos**

- 13.1. You agree that we have the right to erect signage on the Site advertising ourselves during the period of the Work. We also have the right to take photographs of the Work and the Site and use those photographs for promotional purposes.

## **14. Suspension and termination**

- 14.1. Without prejudice to any of our other rights or remedies, we may suspend the Work by notice if you default in any of your obligations under these terms, including failing or refusing to pay any invoiced amount in full by the due date for its payment.
- 14.2. We may terminate our obligations under these terms if at any time:
- (a) you become bankrupt, have a liquidator, receiver or statutory manager appointed, or
  - (b) default in your obligations under these terms and do not remedy that default within 7 days of receiving a notice requiring remedy.

## **15. Business Transactions**

- 15.1. If the Work is to be carried out for the purposes of a business, then to the maximum extent permitted by the law, all guarantees, warranties, rights, or remedies implied by the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other guarantees, warranties, or provisions that would otherwise be implied by statute or rule of law are expressly excluded.

## **16. Notices**

- 16.1. All notices are to be in writing and hand delivered or sent by post or email to the addresses set out in the Quote. Our address for service and postal address is the physical address set out in the Quote.
- 16.2. A notice is deemed to be received:
- (a) if personally delivered, when delivered; or
  - (b) if posted, 5 Working Days after posting; or
  - (c) if sent by email, when the email leaves the sender's communications system, provided that the sender does not receive any error message relating to the sending of the email.
- 16.3. Despite clause 16.2, any notice received after 5pm, or received on a day that is not a Working Day, is deemed not to have been received until 9am on the next Working Day.

## **17. Dispute Resolution**

- 17.1. If there is any dispute relating to these terms or the Work, the party raising the dispute must give the other party written notice specifying particulars of the dispute. If negotiations between the parties do not resolve the dispute, either party shall refer a dispute to adjudication under the Construction Contracts Act 2002 to the Building Disputes Tribunal. If the dispute is referred to adjudication under the Construction Contracts Act 2002, for the purposes of s33(1)(c), the nominating body shall be the Building Disputes Tribunal.

## **18. Definitions**

In these terms:

**Client and you** means the person(s) stated as the Client(s) in the Quote.

**Completion Date** means the expected date on which we reasonably believe the Work will be completed, subject to extensions of time, as stated in the Quote.

**Contract Price** means the price for the Work calculated in accordance with the Quote and subject to any adjustments provided for in these terms.

**Including** does not imply limitation.

**Quote** means the letter provided by us to you describing the scope of the Work.

**Site** means the site address at which the Work is to be carried out, as stated in the Quote.

**Supplier and we** means Mikes The Guy Limited.

**Start Date** means the expected start date at which we reasonably believe physical work will commence on Site, as stated in the Quote.

**Variation** means a variation to the Works under section 9.

**Work** means the construction work stated in the Quote (subject to consents and Variations) at the Site.

**Working Day** has the meaning given in the Construction Contracts Act 2002.