

Wastex Ltd – Terms & Conditions of Trade

1 Definitions

- 1.1 "Wastex Ltd" shall mean Wastex Ltd its successors and assigns or any person acting on behalf of and with the authority of Wastex Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Wastex Ltd to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all Services supplied by Wastex Ltd to the Client (and includes any advice or recommendations) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Wastex Ltd to the Client.
- 1.5 "Price" shall mean the price payable for the Services as agreed between Wastex Ltd and the Client in accordance with clause 3 of this contract.

2 Acceptance

- 2.1 Any instructions received by Wastex Ltd from the Client for the supply of Services and/or the Client's acceptance of Services supplied by Wastex Ltd shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Wastex Ltd.
- 2.4 The Client shall give Wastex Ltd not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Wastex Ltd as a result of the Client's failure to comply with this clause.

3 Price And Payment

- 3.1 At Wastex Ltd's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Wastex Ltd to the Client in respect of Services supplied; or
 - (b) Wastex Ltd's quoted Price (subject to clause 3.2) which shall be binding upon Wastex Ltd provided that the Client shall accept Wastex Ltd's quotation in writing within thirty (30) days.
- 3.2 Wastex Ltd reserves the right to change the Price in the event of a variation to Wastex Ltd's quotation.
- 3.3 At Wastex Ltd's sole discretion a deposit may be required.
- 3.4 At Wastex Ltd's sole discretion:
 - (a) payment shall be due on delivery of the Services; or
 - (b) payment shall be due before delivery of the Services; or
 - (c) payment for approved Client's shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by electronic banking, or by direct credit, or by any other method as agreed to between the Client and Wastex Ltd.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4 Delivery Of Services

- 4.1 Delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated address.
- 4.2 The costs of delivery are included in the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then Wastex Ltd shall be entitled to charge a reasonable fee for redelivery.
- 4.4 The failure of Wastex Ltd to deliver shall not entitle either party to treat this contract as repudiated.
- 4.5 Wastex Ltd shall not be liable for any loss or damage whatever due to failure by Wastex Ltd to deliver the Services (or any of them) promptly or at all.

5 Risk

- 5.1 If Wastex Ltd retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.

6 Title

- 6.1 Wastex Ltd and Client agree that ownership of the Services shall not pass until:
 - (a) the Client has paid Wastex Ltd all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to Wastex Ltd in respect of all contracts between Wastex Ltd and the Client.
- 6.2 Receipt by Wastex Ltd of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Wastex Ltd's ownership or rights in respect of the Services shall continue.
- 6.3 It is further agreed that:
 - (a) until such time as ownership of the Services shall pass from Wastex Ltd to the Client Wastex Ltd may give notice in writing to the Client to return the Services or any of them to Wastex Ltd. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Services shall cease; and
 - (b) if the Client fails to return the Services to Wastex Ltd then Wastex Ltd or Wastex Ltd's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Services are situated as the invitee of the Client and take possession of the Services, and Wastex Ltd will not be liable for any reasonable loss or damage suffered as a result of any action by Wastex Ltd under this clause.

7 Client's Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel any contract with Wastex Ltd or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by Wastex Ltd and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

8 Error and Omissions

- 8.1 The Client shall inspect the Services on completion of delivery and prior to the work area being occupied by other contractors, and then shall notify Wastex Ltd of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford Wastex Ltd an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Services, which Wastex Ltd has agreed in writing that the Client is entitled to reject, Wastex Ltd's liability is limited to either (at Wastex Ltd's discretion) replacing the Services or repairing the Services provided that the Client has complied with the provisions of clause 8.1.

9 Consumer Guarantees Act 1993

- 9.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by Wastex Ltd to the Client.

10 Default & Consequences Of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 10.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify Wastex Ltd from and against all costs and disbursements incurred by Wastex Ltd in pursuing the debt including legal costs on a solicitor and own client basis and Wastex Ltd's collection agency costs.
- 10.3 Without prejudice to any other remedies Wastex Ltd may have, if at any time the Client is in breach of any obligation (including those relating to payment), Wastex Ltd may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. Wastex Ltd will not be liable to the Client for any loss or damage the Client suffers because Wastex Ltd has exercised its rights under this clause.
- 10.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

- 10.5 Without prejudice to Wastex Ltd's other remedies at law Wastex Ltd shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Wastex Ltd shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Wastex Ltd becomes overdue, or in Wastex Ltd's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, 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; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

11 Security And Charge

- 11.1 Despite anything to the contrary contained herein or any other rights which Wastex Ltd may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Wastex Ltd or Wastex Ltd's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Wastex Ltd (or Wastex Ltd's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Wastex Ltd elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Wastex Ltd from and against all Wastex Ltd's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Wastex Ltd or Wastex Ltd's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

12 Cancellation

- 12.1 Wastex Ltd may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice Wastex Ltd shall repay to the Client any sums paid in respect of the Price. Wastex Ltd shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by Wastex Ltd (including, but not limited to, any loss of profits) up to the time of cancellation.

13 Privacy Act 1993

- 13.1 The Client and the Guarantor/s (if separate to the Client) authorises Wastex Ltd to:
 - (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - (b) disclose information about the Client, whether collected by Wastex Ltd from the Client directly or obtained by Wastex Ltd 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 the Client.
- 13.2 Where the Client and/or Guarantors are an individual the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 13.3 The Client and/or Guarantors shall have the right to request Wastex Ltd for a copy of the information about the Client and/or Guarantors retained by Wastex Ltd and the right to request Wastex Ltd to correct any incorrect information about the Client and/or Guarantors held by Wastex Ltd.

14 Construction Contracts Act 2002

- 14.1 In the event that the Buyer is a residential occupier as defined by the Construction Contracts Act 2002 the Buyer hereby expressly acknowledges that:
 - (a) the Seller has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Buyer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Buyer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Buyer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Buyer has not complied with an adjudicator's notice that the Buyer must pay an amount to the Seller by a particular date; and
 - (iv) the Seller has given written notice to the Buyer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Seller suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Buyer or by any person claiming through the Buyer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Seller exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or
 - (ii) enable the Buyer to exercise any rights that may otherwise have been available to the Buyer under that Act as a direct consequence of the Seller suspending work under this provision.

15 General

- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 15.3 Wastex Ltd shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Wastex Ltd of these terms and conditions.
- 15.4 In the event of any breach of this contract by Wastex Ltd the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Wastex Ltd.
- 15.6 Wastex Ltd may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 Wastex Ltd reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Wastex Ltd notifies the Client of such change.
- 15.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 15.9 Neither party shall 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 the reasonable control of either party.
- 15.10 The failure by Wastex Ltd to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Wastex Ltd's right to subsequently enforce that provision.

16 Debtor

- 16.1 DebtForce Limited is Agent for Wastex and assists in recovering overdue accounts.
- 16.2 Any overdue account not paid within the specified time under the normal terms and conditions of Wastex, then, Wastex has the right to add all costs of the collection of that account to the account with those costs payable by you.
- 16.3 To avoid doubt, any transactions on your account are payable by you.
- 16.4 Wastex confirms that it has all the necessary authority under the Privacy Act 1993 in the circumstances to disclose your personal details to Debtforce for the purposes of recovering or listing your default details relating to the overdue account.