

TERMS AND CONDITIONS OF TRADE

The following terms and conditions are applicable to the provision of development and repair services and materials (“the Development Work”) by Triple P Enterprises Limited T/A BK Orchard Developments (hereinafter referred to as “BK”). No other terms, conditions or deviations from these terms and conditions shall be binding unless accepted in writing by an authorised representative of BK. In the event of a conflict between these terms and conditions and any accompanying documentation, the terms and conditions of the accompanying documentation shall prevail.

1. Plans and Specifications

Copyright and ownership in all drawings, specifications and other technical information provided by BK in connection with the contract is vested in BK. Where BK has followed plans and specifications provided by the Customer or their agent, the Customer shall indemnify BK against all damages, penalties, costs and expenses in respect of which BK may become liable through the utilisation of those plans and specifications.

2. Estimates and Acceptance

BK shall produce a formal estimate for the Customer for the Development Work. The estimate shall be subject to the clarifications and exclusions set out in the documentation accompanying these terms and conditions and shall be valid for a period of thirty (30) days from the date specified on the quotation.

The Customer shall accept the estimate by signing the acceptance form accompanying the estimate and signing a copy of any plans and specifications attached to the estimate, if provided. The acceptance of the estimate in the manner specified in this clause shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. Variations

Except as expressly provided in these terms and conditions, no variation or alteration to the scope of the Development Work shall be binding on the parties unless recorded in writing and signed by both parties, including any adjustment to the Contract price.

Any changes required as a result of any ambiguous drawings or any other documentation provided by the Customer or their agent will be treated as a variation to the Development Work.

4. Cancellation

In the event that the Customer wishes to cancel the Contract for the Development Work at any time after acceptance of the estimate, the Customer shall pay all actual and reasonable costs and expenses incurred by BK together with a reasonable administration fee, provided that the Customer shall not be entitled to cancel the contract once the Development Work has commenced without the prior consent in writing of BK.

BK shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any BK for the supply of goods or services to the Customer if the Customer fails to pay any money owing after the due date, or if the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 2006, or if liquidation proceedings are commenced in relation to the Customer, or if the Customer shall otherwise become bankrupt or insolvent, or if any other event occurs which evidences a lack of credit worthiness or insolvency on the part of the Customer. Any cancellation or suspension by BK pursuant to this clause shall not affect BK’s claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer’s obligations to BK under these terms and conditions.

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5. Price

The price of the Development Work shall be the price stated in the estimate together with all extras selected by the Customer and subject to variation in accordance with clause 3. The price estimated for the Development Work excludes GST. GST shall be payable by the Customer in addition to the price quoted.

Where no price is stated in writing or agreed, the goods and/or services shall be deemed to be sold and/or supplied at the current price applying at the date upon which the invoice for the goods or services is issued to the Customer.

Notwithstanding anything contained in this clause or the estimate, the price of the goods and/or services may be increased by the amount of any reasonable increase in cost of supply of the goods or services between the date upon which the estimate is delivered to the Customer and the date upon which the goods or services are supplied and where such increase is beyond the reasonable control of BK.

6. Payment

Payment for the Development Work shall be made in full on or before within seven (7) days of the date of the invoice.

All invoices for progress payments will be prepared in terms of the agreed of payment schedule.

BK reserves the right to charge interest on all overdue accounts at the daily rate of 1.75 times BK's bank total overdraft interest rate from the due date for payment until the date when payment is actually made and all expenses and costs (including legal costs as between solicitor and client and debt collection fees) incurred by BK in obtaining or attempting to obtain a remedy for the failure to pay.

The Customer may not deduct or withhold any amount (whether by way of a set-off, counterclaim or otherwise) from any money owing to BK.

Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

7. Commencement and Completion

The Customer acknowledges that any estimates as to the time frames for the commencement and completion of the Development Work are approximate only. BK will use all reasonable endeavours to ensure the Development Work is commenced and completed within the time frame specified but shall not be liable for any delay or failure to do so. BK shall not be responsible for any delays caused by weather or other unforeseeable event.

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8. Repair of Defects

BK shall at its sole cost rectify any defects in the materials or workmanship which are notified to BK within ninety (90) days of completion of the Development Work and within a reasonable time of receiving written notification of those defects. BK shall not be liable under this clause to remedy:

- defects covered by a manufacturer's or supplier's guarantee that is available to and may be enforced by the Customer;
- defects in or damage caused by work undertaken by the Customer.

9. Risk and Insurance

Any goods supplied by BK shall be at the sole risk of BK until the earlier of payment for the goods or delivery of the goods to the Customer.

If the Development Work involves an extension or alteration to an existing site, the Customer shall be solely responsible for arranging an extension of the Customer's insurance policy to provide insurance cover for all associated risks.

10. Ownership

Ownership of any goods and/or materials supplied as part of the Development Work shall not pass to the Customer until all amounts owing by the Customer to BK in respect of the goods and/or materials have been paid in full.

The Customer will be responsible to BK for any costs or damages incurred in reclaiming and disposing of the unpaid goods and/or materials. Such costs include but are not limited to loss in value, cost or repossession, damaged premises and recovery, storage, resale and legal costs, on a solicitor and client basis. These costs shall be recoverable as a debt due to BK by the Customer.

11. Warranty and Liability

The warranties, descriptions, representations, or conditions whether implied by law, trade, custom or otherwise are, and all other liability of BK, whether in tort (including negligence), BK or otherwise is, expressly excluded to the fullest extent permitted by law.

Insofar as BK may be liable, notwithstanding anything contained in these terms and conditions, to the extent permitted by law the total liability of BK whether in tort (including negligence), BK or otherwise for any loss, damage or injury arising directly or indirectly out of completion of the Development Work or any other breach of BK's obligations is limited to the lesser of:

- (a) to the price of goods and/or materials complained of;
- (b) the cost of completing any necessary repairs/remedial work; or
- (c) the actual loss or damage suffered by the Customer.

Except where statute expressly requires otherwise BK is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

12. Collection and Use of Information

The Customer authorises BK to collect, retain and use any information about the Customer for the purpose of assessing the Customer's creditworthiness and/or enforcing any rights under this BK.

The Customer authorises BK to disclose any information obtained to any person for the purposes set out in this clause. Where the Customer is a natural person, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.

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13. Miscellaneous

BK shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

Failure by BK to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations BK has under this contract.

If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or implied.

The Customer may not assign any of its rights or obligations under this contract without the prior written consent of BK.

14. Governing Law

The within terms and conditions shall be governed by and construed in accordance with the laws of New Zealand and the parties shall submit to the exclusive jurisdiction of the New Zealand Courts.

15. Agency

The Customer authorises BK to contract either as principal or agent for the provision of goods or services.

Where BK enters into a contract of the type referred to this clause the Customer agrees to pay any amounts due under that contract.

16. Dispute Resolution

In the event of a dispute or disagreement arising between BK and the Customer the party with a grievance may give written notice to the other party specifying the nature of the dispute or disagreement, the remedy sought and requiring that the dispute or disagreement be determined and settled in accordance with this clause.

On receipt of the notice, the parties shall each appoint a representative who has authority to determine the grievance or dispute, and those two representatives shall meet as soon as reasonably possible to see if they can determine the grievance. All discussions, meetings and correspondence between the two representatives shall be deemed without prejudice and without concession of liability and shall not be used by either party in any later proceedings unless:

- (a) Both parties agree, or
- (b) The two representatives reach agreement, but one party fails to honour such agreement.

If the two representatives cannot within fourteen (14) days of being appointed reach agreement on how the grievance or dispute is to be determined, the parties shall refer the dispute to an independent expert who is acceptable to both parties. The independent expert shall:

- (a) Set his or her own rules and procedure for the resolution of the grievance or disagreement
- (b) At all times act in good faith and in an unbiased way
- (c) Promptly hear and determine the dispute
- (d) Provide a written decision (with reasons for that decision) if requested by either party.

The independent expert's:

- (a) Decision shall be binding on both parties:
- (b) Costs shall be paid equally by the parties unless the independent expert decides

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otherwise in his or her decision.

Notwithstanding anything contained in clause 17, disputes in excess of ten thousand dollars (\$10,000.00) shall be referred at BK's sole discretion to arbitration under the Arbitration Act 1996 or any subsequent Act passed in its place.