

TERMS AND CONDITIONS OF TRADE

Parties and Definitions to this Agreement:

"MTS" for the purposes of this agreement shall mean MTS Property Services (2018) Ltd, any person or entity acting for or on behalf of MTS Property Services (2018) Ltd or with the permission or authority of MTS.

"Customer" shall mean the Customer, Client, any person or entity acting for or on behalf of the Customer or with the permission or authority of the Customer as detailed on any quotation, estimate, work authority or notation as provided by MTS to the Customer.

"Guarantor" shall mean any person (or persons) or entity, who agrees to be held liable for the debts incurred by the Customer in the course of business between the Customer and MTS on a principal debtor basis.

"Services" shall mean all services supplied by MTS to the Customer and includes any recommendations or consultancy advice.

"Price" shall mean the price payable for the goods and or services as agreed between MTS and the Customer in accordance with clause 3 of this contract.

Goods and Services

The Goods and Services provided shall be described on our invoices, quotation, and/or work authorisation or any other such form as provided by MTS to the Buyer.

Quotations & Tenders

Written quotations provided by MTS shall be deemed to interpret correctly the customer's instructions whether written or oral and the customer is accordingly advised to exercise due care in checking quotations. Any additional work not quoted for shall be carried out at the customer's expense. The term "quotation" shall include estimates for the purposes of these Terms of Trade.

Quotations are based on mid-range material and finish selections and up to 3 colour choices. If paint choices are not made at time of quotation actual selections may result in increased prices payable by the customer following advice by MTS.

Prices quoted are subject to variations occasioned by any increase in the cost of the materials to MTS, subsequent to the date of quotation. The price payable by the customer may be varied by such amounts as MTS shall certify to be reasonable having regard to the demonstrable variation in costs.

Where MTS are supplied with plans to provide quotations, these quotations are based on MTS interpretations of the plan and the understanding of the scope of work. The description of works and bill of quantities quoted for will be set out in the quotation and any changes after the quotation is accepted may result in a variation.

Where quotations are given based on 'off-plan', quotations are based on the original plan supplied. It is the customer's responsibility to provide updated plans and identify to MTS any changes specifically made to the scope of works set out in the quotation. Where changes are made these will constitute a variation.

Any variation from the quotation or tender for scheduled works or specifications (including but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of MTS) will be detailed in writing and charged for in addition to MTS's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full in accordance with the payment terms.

All quotations are valid for 30 days from submittal to the customer. Any tender prices which are accepted by the customer are quoted and based on an agreed project start date and end date for works carried out by MTS. Any variation in the start date over 30 days may result in variations by any increase in the cost of the materials, labour and equipment to be supplied by MTS, subsequent to the agreed tender price.

MTS reserves the right to nullify this contract and/or charge for additional time and/or materials if it is discovered that there are hazardous materials such as Lead or Asbestos present which were unforeseen at the time of this quotation. This clause also applies to unforeseen problems which require solutions outside the scope of usual trade practice for the type of work undertaken.

All quotations are based on the contract being undertaken within normal working hours. Normal working hours are between 7am – 6pm, Mon - Sat.

If work is requested to be undertaken outside of these hours due to project constraints of any nature. Time and a half rate of the charge up rate will be applied. This applies to contract, variations and charge up work.

Payment Terms

Unless stated differently on the quotation, at MTS sole discretion the payment terms shall be as follows:

- (a) Residential Work
 - i. 1/3 third deposit before commencement of work
 - ii. 1/3 due when job is 50% complete
 - iii. Balance due on completion of work and sign off
- (b) Small commercial work
 - i. As per residential unless an account is in place
 - ii. If on account invoiced by the 20th of the month following the completion of the work.
- (c) Large Commercial work
 - i. Progress payment claims will be made during the term of the contract in line with requirement of the contract
 - ii. Payments to be made by the customer bi-weekly to MTS.

MTS Property Services Ltd may at any time require security for payment and may withhold delivery until provision of sufficient security or MTS may at its option suspend or terminate the contract and the payment of all materials delivered and work commenced up to the date of such suspension or termination and all moneys payable hereunder shall immediately become due and payable.

All costs and expenses incurred by MTS in enforcing these conditions of sale including all legal costs incurred in recovering any debts owed to MTS by the customer, shall be payable by the customer. Payment will not be deemed to have been made until payment has been received in clear funds.

All invoices will be directed to the Customer and invoiced in the Customer's legal name unless otherwise agreed in writing by MTS to invoice a third (3rd) party.

MTS Property Services Ltd reserves the right to charge interest on any payments not made as above at the rate of 2.5% per month.

Acceptance of Terms of Trade

Payment of a deposit and/or instruction to commence work or any engagement of MTS's services including the supply of goods to the customer shall constitute acceptance of the Terms and Conditions of Trade of MTS by the customer. Should more than one Customer enter into this agreement the customers shall be jointly and severally liable for payment in full of the Price.

The Customer must be either the rightful legal owner or have the full authority of the legal owner of the Property or Land to enter into a contract or provide instructions of MTS to undertake work or provide services or goods. The terms and conditions of this agreement can only be amended with the written consent of MTS and shall be binding on the customer.

In the event that the customer proposes any change to the structure of the customer's business, a change in shareholding, name, directors, premises, postal address, registered office or sale of the business the customer shall give no less than twenty-one (21) days written notice of the proposed change or changes. If any loss is incurred by MTS, the customer shall be liable for any loss suffered by MTS due to the customer not complying with this provision.

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Continuity of work

For MTS to provide its services the customer will:

- (a) Ensure the site is suitable for working safely and has safe access
 - i. When working on apartment blocks this includes working elevators for people and product
 - ii. When, in the opinion of MTS, an unsafe condition exists, or an unsafe act is being committed (provided such is not caused by MTS Property Services Ltd), you will be instructed to take appropriate action to rectify the situation.
- (b) Ensure the site can be worked on without additional work first being performed (e.g. removing debris, trimming trees, other trades).
- (c) Ensure there is enough work to allow MTS to carry out the contract for a continued period 'uninterrupted work'
- (d) Has access to power (single phase) and water for the duration of the job at no cost to MTS Property Services Ltd.

Uninterrupted work is defined as being able to apply the methods of work employed by MTS to enable the job to run efficiently and on budget. It covers work in the contract and additional work done that was not part of the original quotation.

Additional time taken due to any of the items above or other reasons caused by no fault of MTS Property Services Ltd will also be charged at the standard rate. Any delay caused by the Customer may constitute a variation and be charged accordingly

Title to Goods

Ownership; and title of any goods supplied by MTS to the Customer shall not take effect until;

- (a) The customer has paid MTS all invoiced amounts owing for the goods and fulfilled all obligations to MTS in relation to this agreement
- (b) Any form of payment made by the customer to MTS other than cash shall not be deemed to be payment until that form of payment has been cleared in accordance with clause 3.7 and until then MTS's rights and ownership in relation to the goods shall continue. It is also agreed that
- (c) Once an order for goods or provision of services is placed, no order may be withdrawn, revoked or cancelled without MTS's written consent
- (d) If any part of the goods shall become incorporated into land so as to lose its separate identity, then the title of that proportion of the goods so integrated equal in value to the price owed to the company shall be reserved and vested in the company until all money the customer owes to the company has been paid in full.

Indemnity from Claims

The buyer warrants that no instruction, design, plan, colour scheme or drawing provided to MTS will be misleading, infringe or result in the infringement of any copyright and or any intellectual property right of any person, and/or result in the breach of any law, statute, regulation or ordinance.

No responsibility is accepted for loss arising from delay or inability to deliver occasioned by strike, lock out, difficulty procuring suitable materials, goods or substances required in the manufacture of goods, mechanical failure, shortage of stocks, shortage of labour, lack of skilled labour, delay in transit, prohibition or restrictions, fire, flood, hostilities, civil commotion, terrorism or other cause whatsoever whether similar in nature or not to the foregoing.

MTS will not be liable for any loss or damage to the site or property within (including without limitation, damage to pathways, driveways and concreted or paved or grassed areas, missing goods) unless due to the negligence of MTS.

Where there is potential for damage due to tasks MTS have been asked to carry out which MTS feel have some risk. MTS will inform the customer of this and will not be liable for any damage occurring from this task.

Defects & Warranties

The customer shall inspect the goods or services provided by MTS and shall sign off work prior to MTS leaving the site. When viewing and assessing the quality of the finish for defects the guidelines set out by AS/NZS 2311:2009 Inspecting surfaces from a Normal Viewing Position will be applied.

MTS further warrants that if any fault in any of MTS's workmanship comes to the customer's attention and is reported to MTS within twelve (12) months of the date of completion (time being of the essence) MTS will either (at MTS's sole discretion) replace or remedy the defective workmanship.

With any defects the customer shall afford MTS an opportunity to inspect the area or services within a reasonable time following completion of the service provided if the customer believes the service provided is defective in any way.

If the customer shall fail to comply with these provisions the completed works shall be presumed to be free from any defect. For defective works, MTS's liability is limited to undertaking remedial work on the agreed fault.

Where there are multiple invested parties in the contract. MTS will carry out remedial work on MTS defects for no more than 3 snagging lists. First to be carried out by MTS and handed over to the contractor. The contractor then provides their snagging list. Finally, the Architect/Client provide their list. Further snagging lists will incur any work to be done at the applied charge up rate.

For goods not supplied by MTS, the warranty shall be the current warranty provided by the manufacturer of the goods. MTS shall not be responsible for or bound by any term, representation made, or warranty given other than that which is given by the manufacturer of the goods or product supplied or applied in the course of the work undertaken.

Default and Consequences of Non-Payment

If the customer defaults in payment of any invoice when due, the customer shall pay all costs and disbursements incurred by MTS in pursuing the debt including legal costs on a solicitor and own client basis and MTS's collection agency costs.

Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date payment is received at a rate of 2.5% per calendar month and all interest shall compound monthly before and after any judgement until payment is received in full.

MTS at its discretion may suspend or terminate the supply of goods and/or services should the customer at any time be in breach of any obligation to MTS (including those relating to payment). MTS will not be liable for any loss or damages the customer has deemed to have suffered because MTS has exercised its rights under this clause.

If any account remains overdue after thirty (30) days, then an amount of \$20.00 or 10% of the amount overdue (up to a maximum of \$200) whichever is the greater shall be charged for administration fees and shall become immediately due and payable.

Without prejudice to MTS other remedies at law, MTS shall be entitled to cancel all or any part of any supply agreement with the customer which remains unfilled and all amounts owing to MTS shall, whether or not due for payment, become immediately payable in the event that: any money payable to MTS becomes overdue of payment, or in MTS's opinion the customer will be unable to meet its payments as they become due, or the customer becomes insolvent, convenes and meeting with its creditors or proposes or enters into an arrangement with creditors, or makes any assignment for the benefit of its creditors, or a receiver, liquidator, manager (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer.

Compliance with Laws

MTS and the Customer shall comply with the provisions of all regulations and bylaws of government, local and other public authorities that may have any

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jurisdiction or authority to the works being undertaken. The customer shall obtain (at the expense of the customer) all permits and approvals that may be required for the works unless otherwise agreed in writing by MTS. The customer will ensure that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

Personal Property Securities Act 1999 ("PPSA")

Upon assenting to these terms and conditions in writing the customer acknowledges and agrees that:

- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA, and
- (b) A security interest is taken in all goods previously supplied by MTS to the Customer (if any) and all goods that will be supplied in the future by MTS to the Customer.
- (c) The Customer undertakes to sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which MTS may reasonably require to register a financing statement on the Personal Property Securities Register.
- (d) Indemnify and upon demand reimburse MTS for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any goods charged thereby.
- (e) Not register a financing change statement or a change demand without the prior written consent of MTS, and
- (f) Immediately advise MTS of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds delivered from such sales.

MTS and the Customer agree that nothing in sections 114(1)(a) 133 and 134 of the PPSA shall apply to these terms and conditions. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by MTS, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Customer shall unconditionally ratify any actions taken by MTS under clauses 10.1 to 10.

The Consumer Guarantees Act 1993

If the customer is acquiring goods 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 goods and services by MTS to the client.

The Construction Contracts Act 2002

The customer hereby expressly acknowledges that:

- (a) MTS 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 customer, and:
- (b) the payment is not paid in full by the due date for payment and no payment schedule has been given by the customer, or a scheduled amount stated in a payment schedule issued by the customer in relation to the payment claim is not paid in full by the due date for its payment, or the customer has not complied with an adjudicator's notice that the customer must pay an amount to MTS by a particular date, and MTS has given written notice to the customer of its intention to suspend the carrying out of construction work under the construction contract.
- (c) If MTS 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 customer or by any person claiming through the customer, 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 any adjudicator's determination has not been complied with.

If MTS exercises its right to suspend the work, the exercise of that right does not affect any rights that would otherwise have been available to MTS under the Contractual Remedies Act 1979 or enable the customer to exercise any rights that may otherwise have been available to the customer under the Act as a direct consequence of MTS suspending work under this provision.

Risk

If MTS retains ownership of the goods nonetheless, all risk for the goods supplied passes to the customer when the goods are delivered.

If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the customer, MTS is entitled to receive all insurance proceeds payable for the goods.

The production of these terms and conditions by MTS is sufficient evidence of MTS's rights to receive the insurance proceeds without the need for any person dealing with MTS to make further enquiries.

Dispute Resolution

All disputes and differences between the customer and MTS touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

General

If any provision of these terms and conditions shall be invalid, void, illegal, or unenforceable the existence, validity, legality and enforceability of the remaining provisions shall not be prejudiced, affected or impaired.

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.

MTS shall be under no liability whatever to the customer for any indirect loss and/or expense (including loss of profit) suffered by the customer arising out of a breach by MTS of these terms and conditions.

In the event of any breach of this contract by MTS the remedies of the customer shall be limited to damages which under no circumstances shall exceed the contract price for services provided and limited to the amount of monies paid to MTS by the customer in part or full whichever is the lesser amount.

The customer shall not be entitled to set off against or deduct from the price any sums owed or claimed to be owed to the customer by MTS. MTS may licence or sub-contract all of any part of its rights and obligations without the customer's consent.

MTS 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 MTS notifies the customer of such change.

The provisions of the Contractual Remedies Act 1978 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

The failure by the supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MTS's right to subsequently enforce that provision.