

# SOUTH CANTERBURY HYDRAULICS LIMITED

## TERMS OF TRADE FOR SUPPLY OF GOODS & SERVICES

In these Terms of Trade we have used "we", "us", and "our" to refer to **South Canterbury Hydraulics Limited**. By ordering Work and/or Goods from us, you agree to these Terms of Trade to the exclusion of your terms (if any).

### 1. PRICE

- 1.1 At our sole discretion the Price shall be either:
  - (a) As indicated on invoices provided by us to you in respect of Work supplied; or
  - (b) A quoted price (subject to clause 2).
- 1.2 The quoted price is open for acceptance for 30 days from the date of the quotation unless withdrawn by us prior to acceptance.
- 1.3 Your acceptance should be confirmed in writing prior to supply, but in the absence of written acceptance, our commencement of the Work will be taken as your acceptance by conduct.
- 1.4 All prices given are on a plus GST basis.
- 1.5 In the event our contract with you is terminated in accordance with clause 6.1 prior to completion of the Work, you must immediately pay us the Actual Cost at the termination date.
- 1.6 The "Actual Cost" will be calculated by totalling the following:
  - (a) the number of hours of service multiplied by the normal hourly charge out rates for the workers involved on the date which the Work is undertaken or if the supply occurs over more than one day, the relevant hourly charge out rates on the last day on which services are rendered; and
  - (b) any disbursements (including without limitation delivery costs) incurred by us on your behalf.
- 1.7 All Work that we do for you is subject to these Terms of Trade.

### 2. VARIATIONS

- 2.1 Any changes required to the Work quoted, or to the Work reasonably foreseeable by us at the date of the quotation, shall be a variation. Variations include, without limitation, any change to the scope, quality or timing of the work, any circumstance that changes the cost of performing the Work from that reasonably foreseeable at the time of the quotation, a request for an alternative material, limitations to accessing the site, obscured building defects, safety considerations, prerequisite work by any third party not being completed or of the required quality, or any other circumstance which is stated in these terms and conditions to be a variation, whether arising out of any oral or written instruction from you, your representative or otherwise.
- 2.2 We will advise you as soon as practicable of any change to our contract price arising out of any variation. Variations will generally be valued on the same basis or rates as corresponding original Work. Where Work does not directly correspond to the quotation, or cannot be performed in the most economic manner, variations may at our sole discretion be priced on the basis of time and materials (charge-up) at our normal charge out rates current at the time of performing the Work.
- 2.3 Your acceptance of any variation should be confirmed in writing prior to commencement of Work, but in the absence of written acceptance our commencement of the work pertaining to the variation will be taken as your acceptance by conduct.
- 2.4 We shall be entitled to be paid progressively as specified by us for the reasonable value of any variation whether or not the value of it has been agreed.

### 3. TERMS OF PAYMENT

- 3.1 We may require you to pay a deposit, being an advanced payment for the Work, before we commence the Work.
- 3.2 Payment for the Work (and any associated expenses and disbursements) is due on the 20th day of the month following the date of our invoice except where we have agreed in writing that other terms shall apply ("the Due Date").
- 3.3 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 2% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
- 3.4 Notwithstanding clause 3.3, if payment is outstanding for 7 days from the Due Date, we may suspend performing the Work until payment of all outstanding moneys is received in full (subject always to clause 3.5). You must pay in cleared funds for any Work done by us until payment is made in full (together with any accrued interest).
- 3.5 We may notify you at any time that we have ceased to carry out the Work in advance. This cessation does not relieve you for amounts owing up to the date on which the contract is terminated.
- 3.6 Payment of all money shall be without set-off or deduction of any kind.
- 3.7 We will apportion payments to outstanding accounts as we think fit.

### 4. PERFORMANCE OF WORK

- 4.1 We will:
  - (a) perform the Work with reasonable skill, care and diligence in a professional manner;
  - (b) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you (also note clause 4.2);
  - (c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.
- 4.2 Any time specified by us for provision of the Work is an estimate only and we will not be liable for any loss or damage incurred by you as a result of any delay. However both parties agree that they shall make every endeavour to enable the Work to be provided at the time and place as was arranged between both parties. In the event that we are unable to provide the Work as agreed solely due to any action or inaction by you then we shall be entitled to charge a reasonable fee for postponing the Work and providing the Work at a later time and date.
- 4.3 You will give reasonable assistance to enable us to perform the Work by:
  - (a) giving clear instructions;
  - (b) promptly providing any information or content required from you for us to complete the Work;
  - (c) ensuring that the Work and products derived from the Work are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices.

### 5. LIMITATION OF LIABILITY

- 5.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 5.2 For the purposes of the Fair trading Act 1986 the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), and 13 (false or misleading representations). You agree that all warranties, conditions, and other terms implied by sections 9, 12A and 13 of the Fair Trading Act 1986 are excluded to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 5.3 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Work from us for the purposes of a business in terms of sections 2 and 43 of that Act and you confirm that you are obtaining the Work for such business purpose.
- 5.4 Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause 5.6, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work provided by us to you.
- 5.5 You shall indemnify us and our directors and employees against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Work.
- 5.6 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the amount of the Actual Cost of the Work paid to us by you for the Work.
- 5.7 This clause shall continue in force notwithstanding the termination of these Terms of Trade or the completion of the Work.

### 6. DEFAULT

- 6.1 Any security interests created by these Terms of Trade become enforceable if any of the following events occur:
  - (a) you fail to pay any money owing on the Due Date;
  - (b) you sell, part with possession or dispose of any Goods or do anything inconsistent with our ownership of the Goods prior to making payment in full to us;
  - (c) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
  - (d) the Goods are at risk, as that term is defined in the PPSA;
  - (e) you neglect or fail to carry on your business to our reasonable satisfaction, or if there is a significant deterioration in your trading or asset position;
  - (f) you are otherwise in breach of your obligations under these Terms of Trade.
- 6.2 If any of the events described in clause 6.1 occur, in addition to any remedies we may have at law, we may do one or more of the following:
  - (a) suspend the Work in accordance with clause 3.4;
  - (b) charge default interest in accordance with clause 3.3;
  - (c) enter on to your premises and repossess any Goods which have not been paid for in full;
  - (d) immediately terminate our contract with you by notice in writing to you.

### 7. COSTS

- 7.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade.

### 8. PRIVACY OF INFORMATION

- 8.1 You authorise us:
  - (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
  - (b) to disclose information about you:
    - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
    - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.

### 9. ASSIGNMENT

- 9.1 You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade.

### 10. NOTICES

- 10.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors).

### 11. DISPUTES

- 11.1 If either party has any dispute with the other under these Terms of Trade:
  - (a) that party will promptly give full written particulars of the dispute to the other; and
  - (b) the parties will promptly meet together and in good faith try to resolve the dispute.
- 11.2 If the dispute is not resolved within 7 days of the written particulars being given (or any longer period as agreed between the parties) the dispute will be referred to mediation (unless the parties otherwise agree to adjudication in accordance with their rights under the Construction Contracts Act 2002) by either party giving written notice of such referral to mediation to the other.
- 11.3 Until mediation ceases neither party may commence legal proceedings.
- 11.4 The mediation procedure is:

- (a) The party who wishes to resolve a dispute must give a notice of the dispute to the other party.
- (b) The notice must state that the dispute has arisen, and state the matters in dispute.
- (c) When the notice has been given the parties will appoint a mediator. If they fail to appoint a mediator within 14 days, on request by either party, the mediator will be appointed by the President of the New Zealand Law Society or the president's nominee.
- (d) The parties must co-operate with the mediator in an effort to resolve the dispute.
- (e) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
- (f) If the dispute is not settled within 14 days after the mediator has been appointed, or within any extended period as agreed to in writing between the parties, the mediation must cease.
- (g) The parties will promptly meet together and in good faith try to resolve the dispute.
- (h) The mediator may engage an appropriately qualified expert to give an opinion on technical matters. The cost will be a mediators cost.
- 12. FORCE MAJEURE**
- 12.1 If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.
- 12.2 We shall not be liable for delay or failure to perform the Work if the cause of delay or failure is beyond our control.
- 13. RISK OF GOODS**
- 13.1 The risk in Goods supplied passes to you on delivery.
- 14. DELIVERY**
- 14.1 Delivery occurs at the time possession of the Goods passes to you (or a person nominated by you) from us.
- 14.2 Any date or time expressed for delivery is given as an estimate only and we shall not be liable whatsoever for delays in delivery for any reason.
- 15. TIME COMPLETION**
- 15.1 We will endeavour to complete the Work within a reasonable time and will endeavour to meet any target date you make known to us. Should it be necessary to work outside ordinary working hours to meet your completion target or due to any other circumstances outside our control, you shall be liable for any extra cost incurred.
- 16. ACCESS**
- 16.1 You shall ensure that we have clear and free access to the worksite at all times to enable us to undertake the Work. We shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted, paved or grassed areas) unless it is directly caused by our negligence.
- 17. VARIATIONS IN MATERIALS**
- 17.1 You acknowledge that materials provided may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. We will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 18. OWNERSHIP / RECOVERY OF JOB**
- 18.1 Goods which form part of the Work, and any accounts receivable arising from the partial or completed Work, remain our sole and absolute property as legal and equitable owner until we have received payment in full of all monies (whether for the Work or otherwise) owed by you to us. Any form of payment made by you to us other than cash shall not be deemed to be payment until that form of payment has been cleared.
- 18.2 If you are in default, we may (without prejudice to any other rights or remedies) enter any premises occupied by you or Work site to recover Goods that form part of the Work. If the premises are those of a third party, we may enter and recover goods for the Work as your agent, and you irrevocably appoint us for this purpose.
- 18.3 We may sell any recoverable portion of the Work and apply the proceeds towards the amount you owe us.
- 19. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
- 19.1 All terms in this clause 19 have the meaning given in the PPSA and section references shall be to sections of the PPSA.
- 19.2 Clause 18 creates a security interest in Goods we supply to you as part of the Work.
- 19.3 You shall not grant any other security interest or any lien over Goods that we have a security interest in.
- 19.4 At our request you shall promptly sign any documents and do anything else required by us to ensure that our security interest constitutes a first ranking perfected security interest in the Goods.
- 19.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the Goods or in the whole.
- 19.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 19.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 19.8 You will give us prior written notice of a proposed change of your name or address.
- 20. DEFECTS, ERRORS AND OMISSIONS**
- 20.1 You shall inspect the Work on completion and shall within twenty-one (21) days of such time (being of the essence) notify us of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. You shall afford us an opportunity to inspect the Work within a reasonable time following such notification if you believe the Work is defective in any way. If you shall fail to comply with these provisions the Work shall be presumed to be free from any defect or damage. For defective Work, which we have agreed in writing that you are entitled to reject, our liability is limited to either (at our absolute discretion) rectifying the Work, replacing the Goods or reimbursing you the Actual Cost paid by you.
- 21. INTELLECTUAL PROPERTY**
- 21.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of the Work:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms of Trade (whether you or us);
- (b) any new Intellectual Property will be dealt with in accordance with clause 22.
- 21.2 If any Work is to be undertaken based on your designs, you warrant that the undertaking of the Work by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the Work infringes any patent, copyright or other rights of any other person.
- 22. INTELLECTUAL PROPERTY OWNERSHIP**
- 22.1 Subject to clauses 21.1(a) and 22.4 we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) in the Work, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
- 22.2 We shall retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.
- 22.3 You must not attribute the Work to anyone other than us or remove any of our trade marks, signatures, logos or similar from our Work.
- 22.4 Upon payment of all amounts owing to us in accordance with these Terms of Trade, we assign to you the copyright in the final form of any Work which we have specifically created for you for the countries and for the purposes as specified in the description of the Work, or if not specified, for the countries and for the purposes which would be reasonably expected in light of the nature of your request for the Work.
- 22.5 This clause 22 shall continue in force as between the parties notwithstanding the termination of these Terms of Trade or the completion of the Work.
- 23. VARIATION**
- 23.1 We shall be entitled at any time by notice in writing to you to vary any provision of these Terms of Trade and you shall be bound by such variation as from the time such notice is given.
- 24. CONFIDENTIALITY**
- 24.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.
- 25. JURISDICTION**
- 25.1 These Terms of Trade are governed by and construed in accordance with the current laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms of Trade.
- 26. NON WAIVER**
- 26.1 If we fail to enforce any provision of these Terms of Trade it shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision. If any provision of these Terms of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27. DEFINITIONS, INTERPRETATION & MISCELLANEOUS**
- 27.1 In these Terms of Trade:
- "Goods" shall have the meaning given to it in the Personal Property Securities Act 1999.
- "Intellectual Property" includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).
- "Work" means any product, goods or service supplied by us to you and upon request from time to time.
- 27.2 The rule of construction known as the contra proferentem rule does not apply to these Terms of Trade.
- 27.3 Each clause of these Terms of Trade is separately valid and binding. If for any reason a party cannot rely on any term, all other terms will remain valid and binding.
- 27.4 Words importing the singular include the plural and vice versa.
- 27.5 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms of Trade.
- 27.6 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.
- 27.7 References to a statute include references to:
- (a) regulations, orders, rules or notices made pursuant to that statute;
- (b) all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
- (c) any statute passed in substitution of that statute.
- 27.8 References to "us", "we" and "our" include our employees, contractors and agent.

## PERSONAL GUARANTEE

**GUARANTEE:**

In consideration of **South Canterbury Hydraulics Limited** agreeing to supply Goods and/or Work to the Customer at my/our request:

1. I/We unconditionally guarantee the due and punctual payment by the Customer of all moneys payable in accordance with the Terms of Trade attached to this form as and when the same become due and payable by the Customer.
2. I/We agree to be deemed as principal debtor for all accounts held by the Customer with South Canterbury Hydraulics Limited.
3. I/We agree that this guarantee will be a continuing guarantee and will not be discharged by any settlement or payment of account and that this guarantee is both joint and several.
4. I/We agree that our liability under this guarantee will not be discharged, abrogated, prejudiced or affected by:
  - a. the granting of time, credit or the indulgence or other concession to the Customer;
  - b. any alteration, modification, variation or addition to any agreement in respect of the supply of goods and services; or
  - c. any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, my/our obligations under this guarantee or any powers or remedies conferred on South Canterbury Hydraulics Limited and/or its associated entities by this guarantee or by law.
5. I/We confirm that I/we have been advised that I/we should seek legal advice before signing this guarantee.

Name: .....	Signed: .....	Designation: .....
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Witness Name: .....	Witness Signed: .....	Date: .....
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Name: .....	Signed: .....	Designation: .....
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