

Zentek Limited - Terms of Trade

1. Definitions

"Seller" shall mean "Zentek Limited".

"Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.

"Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are Goods supplied by the Seller to the Customer.

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

"Price" shall mean the cost of the Goods and/or Services as agreed between the Seller and the Customer.

2. Acceptance

Any instructions received by the Seller from the Customer for the supply of Goods and/or Services, and/or acceptance of Goods and/or Services by the Customer, shall constitute acceptance of the terms and conditions contained herein.

The Seller shall not be bound by any unauthorised statements, conditions or agreements, made by the Seller's representative, not expressed by the Seller in writing.

3. Goods / Services

The Goods and/or Services are as described on the quotation, work authorisation, or invoice as provided by the Seller to the Customer.

4. Price and Payment

The price for Goods and/or Services shall be the Seller's current price at the date of delivery of the Goods and/or Service, or as indicated on invoices provided by the Seller to the Customer, or the Seller's quoted price, provided that the Customer accepts the Seller's quotation within thirty days (30).

Applicable GST having been added to such price.

At the Seller's sole discretion a deposit may be required, the amount or percentage being specified at the time of work authorisation, and payment of such being due prior to commencement of work.

Payment will be due upon completion or supply of the Goods and/or Service, or at the Seller's sole discretion, on the 20th each month following the posting of a statement to the Customers address.

5. Default & Consequences Of Default

Interest on overdue invoices shall accrue daily, at a rate of 2.5% per calendar month, from the date when payment becomes due, until the date of payment.

If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against the Seller's costs and disbursements including legal costs on a solicitor and own client basis, and in addition, all of the Seller's costs of collection.

If any account remains unpaid at the end of the second month after supply of the Goods and/or Services, an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees, which sum shall become immediately due and payable in addition to the interest payable.

6. Title

It is the intention of the Seller and agreed by the Customer that property in the Goods shall not pass until the Customer has paid all amounts owing for the particular Goods, and the Customer has met all other obligations due by the Customer to the Seller, as regards all contracts between the Seller and the Customer.

Until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.

If the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

This provision does not entitle the Customer to return the Goods without demand from the Seller, except in accordance with Clauses 12 or 13 herein.

7. Privacy Act 1993

The Customer authorises the Seller to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness, or marketing any Goods and/or Services provided by the Seller to any other party.

The Customer authorises the Seller to disclose any information obtained to any person, for the purposes set out above.

Where the Customer is a natural person, the authorities above, are authorities or consents for the purposes of the Privacy Act 1993.

8. Risk

Even if the Seller retains title in the Goods, nonetheless all risk for the Goods passes to the Customer on delivery.

If any of the Goods are damaged or destroyed prior to title in them passing to the Customer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions, to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions.

9. Disclaimer

The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any representative of the Seller. The Customer acknowledges that he buys the goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer.

10. Consumer Guarantees Act 1993

This agreement is subject, in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.

11. Cancellation

The Seller may cancel these terms and conditions or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Customer any sums paid in respect of the Price for those Goods and/or Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

At the Seller's sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any costs incurred by the Seller up to the time of cancellation.

12. Defects/Returns

The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be in accordance with the terms and conditions and free from any defect or damage.

For defective Goods which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to replacing the Goods provided that:

- (a) the Customer has complied with the provisions of clause 12 (above);
- (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date;
- (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

The Seller may (in its discretion) accept the Goods for credit but this may incur a restocking fee of 15% of the value of the returned Goods plus any freight.

While every effort will be taken by the Seller to match colour of product, the Seller will take no responsibility for any variation between sale samples and the final product.

13. Warranty

For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

14. Security & Charge

Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) Where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer acknowledges and agrees that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify the Seller from and against the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of this clause the Customer does hereby irrevocably nominate, constitute, and appoint the Seller or the Seller's nominee as the Customer's true and lawful attorney to execute mortgages and charges (whether register able or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in their absolute discretion against the joint and/or several interest of the Customer in any land, realty or asset in favour of the Seller and in the Customer's name as may be necessary to secure the said Customer's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. Lien

Where the Seller has not received the whole of the price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the Goods;
 - (b) the right to retain them for the Price while the Seller is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale;
 - (e) the foregoing right of disposal; and
- the Seller may claim from the Customer, the loss to the Seller on such disposal.

16. General

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

All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods or Services supplied.

In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods and/or Service.

The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

The Customer shall not set off against the Price amounts due from the Seller.

The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Customer of such change.