

1 Terms of Contract

- 1.1 Any Goods and Services supplied by us to you shall be subject to the terms and conditions outlined in our Proposal (if applicable) and these Terms, which shall apply to the exclusion of any other agreements with you about the supply of the Goods and Services.
- 1.2 If you accept Goods and Services from us that action will be deemed to be acceptance of the terms of our Proposal and these Terms, despite anything that may be stated to the contrary in your enquiries or your order.
- 1.3 Variations to the Proposal or these Terms are only effective if they are agreed in writing and signed by our authorised representative.
- 1.4 Where there is any conflict between the Proposal and these Terms, the Proposal shall prevail.

2 Our Responsibilities

- 2.1 We will make every effort to supply Goods and Services on time. However, we shall not be liable to you for any failure to supply them on a specified date or within a specified period, however that failure was caused.
- 2.2 Unless otherwise agreed with you, the Services shall be supplied during our normal business hours.
- 2.3 Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods or the provision of Services to you, if we determine, at our discretion, that our costs have increased materially. Further, quoted prices only apply to the total quantities and delivery dates specified in the quotation.
- 2.4 In supplying the Services, it may be necessary for us to engage subcontractors. However, we will take full responsibility for their work, as if it had been done by us under these Terms.

3 Your Responsibilities

- 3.1 You must:
 - (a) cooperate with us in all matters relating to the Services;
 - (b) provide us, and our agents, subcontractors and employees, in a timely manner, with all-weather access to your site, premises and other facilities as reasonably required by us to supply the Services;
 - (c) obtain and maintain all necessary resource and other consents in respect of the Services, and advise us of any conditions relating to them;
 - (d) locate, mark and advise us of all gas pipes, water pipes, sewerage lines, drainage lines, telephone cabling and other utilities at your site, together with any other matters and things at your site which might constitute a hazard;
 - (e) provide safe and secure storage at your site for materials and equipment we will use when we supply the Services; and
 - (f) comply with all other obligations, including any "Council Requirements" outlined in the Proposal.
- 3.2 If we suspend work or are prevented from proceeding due to your failure to comply with any obligations outlined in clause 3.1, we may serve notice on you requiring rectification of such actions or default and failing such rectification within a reasonable period specified by us (being not more than 14 days) we may in addition to our other remedies, cancel our contract with you.
- 3.3 You agree to indemnify us, on demand, against any costs, claims, demands, actions and liabilities incurred by us arising out of any failure to comply with your obligations under clause 3.1.

4 Service charges

- 4.1 Our charges for the Services are set out in the Proposal. Where no Proposal has been given, or the Services provided are in addition to those outlined in a Proposal, the relevant Services will be charged at our prevailing standard rates.
- 4.2 Despite clause 4.1 above, we may vary our quoted charges:

- 4.3 in the circumstances (if any) set out in the Proposal;
 - (a) if our costs increase between the date of the Proposal and our supply of the Services;
 - (b) if, in the course of the Services, we encounter contaminated soils or debris, or any of the items referred to in clause 3.1(d) above (except where you told us about them before the Proposal);
 - (c) if our supply of the Services is delayed by any default, act or omission on your part (or the part of your agents, employees or subcontractors);
 - (d) if we supply the Services outside our normal business hours; or
 - (e) if we agree to any variation to the Services.

4.4 We may withdraw a Proposal before it is accepted and, in any event, a Proposal will lapse, without notice, 30 days after it is given.

4.5 Unless otherwise agreed in writing, our charges are exclusive of GST, which will be charged to you at the prevailing rate.

5 Price of Goods

- 5.1 Where the price for Goods is not set out in a Proposal then this will be either as quoted to you in writing or, if no written quotation is provided, as set out in our standard price list applying at the time of delivery.
- 5.2 Despite clause 5.1 above, unless otherwise agreed in writing, any quoted price may be altered before delivery of Goods to you, if our costs fluctuate after the date of quotation
- 5.3 We may withdraw a quotation before it is accepted and, in any event, a quotation will lapse, without notice, 7 days after it is given.
- 5.4 Unless otherwise agreed in writing, all prices are exclusive of packaging, freight, insurance and delivery charges and Goods and Services Tax and other government duties, levies or taxes in respect of the Goods. These will be charged at the rates applying at the time of delivery.

6 Payment

- 6.1 Where the basis of invoicing is not set out in the Proposal then, unless we have agreed in writing to extend credit to you, you must pay for Goods in full before delivery.
- 6.2 Unless otherwise agreed in writing, where we have agreed to extend credit to you, invoices must be paid in full, without deduction or set off, within 20 days following the date of invoice. Your payment is made only when funds have fully cleared through the bank's system into our bank account.
- 6.3 If full payment is not made by the due date, then without prejudice to any other rights or remedies available to us:
 - (a) we may cancel or suspend all or any part of the Services and/or delivery of Goods;
 - (b) we may charge interest on overdue monies on a daily basis at 5% per annum above the current overdraft rate charged by our bankers at that time, and interest shall continue to accrue both before and after judgment; and
 - (c) you will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by us in recovering such monies.
 - (d) any discount offered to you will be deemed to be withdrawn, and you will be liable for the full invoice price.
- 6.4 We may accept and apply payments from you in respect of any indebtedness, and we will not be bound by any conditions or qualifications attaching to the payments.
- 6.5 Where we have agreed to extend credit to you, we may, from time to time at our discretion, vary your credit limit with us. If the supply of Services and/or a purchase of Goods would exceed your current credit limit, we may require payment in cash of the excess before supply and/or delivery of them.
- 6.6 Despite clauses 6.1 and 6.2 above or any agreement to the contrary, all payments shall become immediately due and

- payable in any of the circumstances set out in clauses 9.2(a) or (b).
- 7 Ownership of Goods**
- 7.1 Ownership in the Goods shall not pass to you at the time of delivery, but will remain with us until we have received full payment, in cash or cleared funds, of all monies owing by you to us.
- 7.2 Until all such monies have been paid:
- (a) you will keep the Goods separate from any other goods in your possession, and properly stored, protected and insured, and identified as our property;
- (b) all sums received from any insurance claim made in respect of loss of or damage to the Goods shall be treated as if they were proceeds of sale and held by you on the same terms as those set out in clause 7.2(c) below, and you will also hold on trust for us and, if required by us, forthwith assign to us the benefit of any insurance claim made in respect of the Goods;
- (c) where the Goods are sold to you as inventory for resale, you may resell them in the normal course of your business at full market value, provided that (i) the resale shall be as principal in relation to your sub-buyer but, as between you and us, you will sell as our fiduciary agent and bailee and (ii) you hold the proceeds of the resale on trust for us, and pay them into a separate bank account without mixing them with other monies; and
- (d) we may, at any time, require you to deliver the Goods (which have not been resold) to us and, if you fail to do so forthwith, our employees and agents may enter any premises where the Goods might be stored and recover them, and you agree to indemnify us, on demand, against any liability incurred by us in our exercise of this right.
- 8 Risk and Delivery**
- 8.1 Delivery of the Goods will take place when they are received by a carrier for delivery to you, or the time they are received by you or your agent, whichever is earlier. When you ask us to deliver Goods directly to another person, that person takes possession of the Goods for you as your agent.
- 8.2 Despite clause 7 above, risk in respect of the Goods shall pass to you on delivery in accordance with clause 8.1 above. You are responsible for insurance of the Goods from that time.
- 8.3 Without limiting the previous provisions of this clause 8, all claims for shortages or delivery damage must be made to the carrier and us within seven days after delivery.
- 9 Cancellation and Returns**
- 9.1 You may not cancel all or any part of the Services without our written consent. If we consent, all charges due up to the date of consent are payable immediately.
- 9.2 We may cancel or suspend all or any part of the Services without liability to you if:
- 9.3 we reasonably believe that the information which you have given us in your application for credit account is not correct or no longer correct;
- 9.4 you default under any agreement with us, become insolvent or commit any act of bankruptcy, a receiver, liquidator, administrator or statutory manager is appointed over any of your assets or undertaking or you make or attempt to make an arrangement or composition with your creditors; or
- 9.5 supplying the Services becomes impracticable or uneconomic due to any cause beyond our control.
- 9.6 Goods may be returned for credit only if we have agreed in writing, and they are received by us at our premises where they were despatched from within 14 days after delivery and in the same condition as they were delivered to you. Returned Goods must be sent at your expense, with a copy of the original packing slip or invoice. We may charge you a restocking fee.
- 9.7 You may not cancel an order for Goods, wholly or partly, without our written consent. As a condition of giving our consent, we may require reimbursement of any costs (including materials, handling fees and labour) incurred by us in connection with the order up to the date of our consent.
- 9.8 In addition to our rights under clause 6.3(a), we may cancel or suspend an order for Goods, wholly or partly and without liability to you, in any of the circumstances set out in clause 9.2 (a) or (b) or if fulfilling the order becomes impractical or uneconomic due to any cause beyond our control.
- 10 Security**
- 10.1 As security for all of your obligations to us from time to time (including monies owing by you to us now and in the future), you grant us a security interest in respect of all your right, title and interest in all of your present and after acquired property (including real property, to the intent that a caveatable interest is created). You agree that any such property that comes into existence after the date of these Terms will come into existence subject to such security interest without the need for any further action by either you or us. You acknowledge that you have received valuable consideration from us, and agree that it is sufficient and attachment is immediate and is not postponed.
- 10.2 You undertake to:
- (a) do all acts and provide us on request all information we require to register a financing statement or financing change statement on the Personal Property Securities Register; and
- (b) advise us immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register.
- (c) You:
- (d) waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interests created under these Terms;
- (e) agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections; and
- (f) waive your rights and, with our agreement, contract out of your rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA.
- 11 Warranty and Liability**
- 11.1 Subject to clauses 11.5 and 12.1 below, our liability under the Proposal and these Terms excludes and replaces all other warranties, conditions or obligations imposed or implied by common or statute law, usage or otherwise.
- 11.2 We are not liable for any indirect, special or consequential loss or damage of any kind.
- 11.3 Our total liability in respect of all claims which you may have against us for the supply of the Services and/or Goods shall not exceed our charges for the Services and/or the price paid for any Goods.
- 11.4 If you have a claim against us for which we may be liable under these Terms, you must write to us, giving full details of the claim, within two months of the date on which the claim arises. If you write to us within that time, we will investigate your claim. If you do not, we will not be liable in respect of that claim.
- 11.5 We will, where we are able to do so, pass on the benefit of any manufacturer's or supplier's guarantee or warranties for Goods but without being directly liable to you in any respect, including where the Goods are defective in any way.
- 11.6 Subject to clause 11.5, we will replace or, at our option, repair Goods supplied to you which are accepted by us to be defective free of charge, provided that you notify us in writing of the defect in sufficient detail for the Goods and the defect to be clearly identified within seven days after delivery, and return the Goods to us at our premises where they were

despatched from or to an authorised repairer nominated by us for the purpose at your expense.

11.7 We shall not be liable under any circumstances for any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow our instructions, misuse, or any alteration or repair of the Goods not authorised by us.

12 Consumer Guarantees Act

12.1 If the CGA applies, these Terms shall be read subject to your rights under the CGA.

12.2 Where you are acquiring the Services for the purposes of a business (as provided in sections 2 and 43 of that Act), the CGA shall not apply.

12.3 Where clause 12.2 above applies and you are acquiring the Goods for the purposes of resale, your terms of trade applying to the resale (and, if your customers acquire the Goods for the purposes of resale, their terms of trade and the terms of trade of each other person in your distribution chain) must include a provision having the same effect as that clause. You agree to indemnify us, on demand, against any liability under the CGA as a result of any failure by you, your customers or any other person in your distribution chain to include such a provision.

12.4 We do not undertake that repair facilities and parts will be available for the Goods and, accordingly, section 12 of the CGA shall not apply.

13 Intellectual Property

13.1 Neither we nor our suppliers transfer to you any right, title or interest in any copyright, trade marks, patents or other intellectual property rights in or relating to the Goods.

13.2 You warrant that any designs, drawings or specifications which you provide to us will not infringe any intellectual property rights of any third party, and you agree to indemnify us, on demand, against any liability we may suffer as a result of our use of those designs, drawings and specifications.

14 Force Majeure

14.1 We are not liable for delay in performing or failure to perform our obligations under the Proposal or these Terms if that delay or failure results from anything beyond our reasonable control. Any such delay or failure will not be a breach of the Proposal or these Terms and the time for performance of our obligations will be extended by a period equal to that during which performance is prevented.

15 Privacy

15.1 We may use any personal information that you give to us for credit, administration, service and marketing purposes. If you do not give this information, we may not be able to provide the Services.

15.2 You authorise any person or company to give us such information as we may require in response to our credit and other enquiries.

15.3 You understand that we may use a credit reporting agency to credit check you. In such case:

- (a) the agency will give us information about you for that purpose;
- (b) we will give your personal information to the agency, and the agency will hold the information on its systems and use it to provide their credit reporting service;
- (c) when other customers use the service, the agency may give the information to those customers; and
- (d) if you default in your payment obligations to us, information about the default may be given to the agency, and the agency may give the information to other customers.

15.4 You have a right of access to, and may request correction of, your personal information.

15.5 If the customer is a company, the word "you", where used in this clause 15, includes its directors and shareholders.

16 General Terms

16.1 Amendments: We may amend these Terms from time to time by notice to you in writing.

16.2 Waiver: No delay or failure by us to exercise our rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.

16.3 Severability: If a court decides that part of these Terms is unenforceable, the part concerned shall be deleted from the rest of these Terms, which will then continue in force.

16.4 Law: These Terms will be interpreted in accordance with and governed by the laws of New Zealand, and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this contract.

17 Defined Terms and Interpretation

17.1 In these Terms, the following words have the following special meanings:

17.2 "CGA" means the Consumer Guarantees Act 1993;

17.3 "Goods" means goods and materials supplied by us to you at any time and includes any goods described by item or kind on any relevant quote, order form, packing slip or invoice, on the basis that each such quote, order form, packing slip or invoice shall be deemed to be incorporated in and form part of these Terms;

17.4 "PPSA" means the Personal Property Securities Act 1999;

17.5 "Proposal" means any proposal or quotation for the supply of Goods and Services;

17.6 "Services" means all services supplied by us to you at any time;

17.7 "Terms" means these terms of trade (as amended from time to time);

17.8 "we", "our", "us" means Parklink Limited and any of its related companies (as defined in the Companies Act 1993) from time to time; and

17.9 "you" means (subject to clause 15.5 above) the customer named in the Proposal.

17.10 The terms and expressions used in clause 10 above have the special meanings given to them in, or by virtue of, the PPSA.

17.11 For convenience, these Terms have been grouped under different headings, but the headings to not affect the meanings of these Terms.