

Terms of Trade

1. These terms of trade (**Terms**), together with the attached Client Information Form, our Quotation and any plans or specifications (and any variations of such) accompanying or annexed to these Terms or otherwise provided by us are the terms and conditions on which Kerbwell Limited (**we, us, our**) will provide Services to or for you (**Agreement**).
2. In the event that conflict arises between these Terms, a Quotation or any other trade arrangement, agreement, or course of dealing between you and us these Terms will prevail.

Meanings of terms used

3. In this Agreement:

Business Day means a day on which registered banks are open for business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays.

Client Information Form means the Client Information Form provided to you by us and as attached to these Terms.

Force Majeure Event means any event or circumstance (whether arising from natural causes, human agency or otherwise) that is beyond our reasonable control, including strikes, lockouts or other labour disputes, riot, civil commotion, fire, flood, drought, pandemic, epidemic, loss or delay at sea, breakdown or war (whether declared or not).

Materials means all materials required to complete the Services, including specific concrete strength and mixture as specified in the Client Information Form.

Meterage means the rate charged per metre of kerb required as set out in the Client Information Form and charged in accordance with clause 8.

Project Site means the project site specified in the attached Client Information Form where the Services are to be carried out.

Quotation means a written offer from us to you to supply Services to you.

Services means all services, recommendations and advice provided from time to time by us to you, and will include, without limitation, all kerb construction, maintenance and repair and otherwise as more particularly specified in the attached Client Information Form.

Quotations

4. Where we give a Quotation, unless otherwise agreed, the Quotation will be valid for 30 days from the date of issue. We reserve the right to withdraw or vary any Quotation prior to providing the Services.
5. You acknowledge and agree that a Quotation may be altered by us, and that any increase in the Quotation will be at your expense, where:
 - (a) your original requirements as set out in the Client Information Form are changed or added to by you;
 - (b) any plans, specifications or information provided by you and relied upon by us for the purpose of providing the Quotation prove to be inaccurate or unreliable;
 - (c) any product or material supplied by you proves not to be suitable or of sufficient quality or standard;
 - (d) we are required to purchase any incidental goods and/or services as are reasonably required by us to perform the Services including where materials in excess of those set out in the Client Information Form are required to properly complete the Services. Any cost in obtaining such materials, goods and/or services will be payable by you and we will maintain records to clearly identify the time and expenses associated with such purchases;
 - (e) any other change or variation which is recommended by us and/or requested by you;
 - (f) where conditions outside of our control cause delays to either the commencement or completion of Services covered under this Agreement;
 - (g) unknown or unforeseen conditions or problems are discovered after commencement of the Services; or
 - (h) further Services are required in addition to scope of services anticipated in the Quotation.
6. As soon as either party becomes aware of anything that will affect the scope of the Services, they must notify the other in writing.
7. You acknowledge that any increase to the cost of labour, materials and equipment, travel, freight, duties, taxes and other variable and fixed expenses following the date of our Quotation may be added to the final invoice payable by you.

Price and Payment

8. The Services will be charged per meter of kerb required (as specified in the Customer Information Form or as otherwise agreed by the parties) at the applicable Meterage together with any costs and disbursements incurred in providing the Services, including (without limitation) material costs, hire charges, insurance charges, or any other fee or charge associated with the supply of Services to you, and otherwise for the price specified in our Quotation (if provided and as varied in accordance with these Terms) or otherwise advised by us to you.
9. Unless otherwise stipulated in writing, all prices, rates and fees are exclusive of goods and services tax (**GST**). GST will be payable by you in addition to the price of the Services.
10. We reserve the right to charge a fee of \$500.00 (**Service Delay Fee**) where the Services are cancelled or postponed by you with less than 24 hours' notice to us from the Service Date specified in the Client Information Form and we shall issue an invoice to you in relation to any such Service Delay Fee.

11. We will invoice you for all amounts payable (including any Service Delay Fees incurred under clause 10) on a regular basis at our discretion and in accordance with all applicable laws. We may require payment of a deposit in advance of Services being provided. We do not accept part payment of any invoice issued by us.
12. Amounts owing by you under any invoice issued by us for the Services, will be due and owing by you (in full) on or before the 20th of the month following the date of the relevant invoice (**Due Date**). You must pay each invoice we issue to our designated account in cleared funds and without set-off by the Due Date unless we agree otherwise.
13. If payment is not received by the Due Date, then subject to all applicable laws and without prejudice to any other rights we have, we will be entitled to charge interest on all amounts outstanding at our bank's commercial overdraft interest rate plus 5% per annum from the Due Date to the date we receive payment in full. Interest will be calculated on a daily basis. We may suspend provision of Services until payment (including any deposit or interest) has been made in full.
14. Where the nature of the Services is such that this Agreement is covered by the Construction Contracts Act 2002 (**CCA**) and we issue a payment claim in accordance with the CCA, the provisions of the CCA will apply. In all other cases, if you reasonably dispute an invoice, or part of an invoice, you must promptly give the reasons for withholding the disputed amount and pay any undisputed amount in accordance with clause 12.

Provision of Services

15. We agree to provide the Services using the degree of skill, care and diligence reasonably expected of any other professionals providing services similar to the Services referred to in this Agreement.
16. We will use reasonable endeavours to provide the Services to you on or before the Service Date(s) specified in the Client Information Form. Factors outside of our control such as weather conditions, Material supply chain disruptions or plant delays may result in a change to the Service Date specified in the Client Information Form. We will contact you if this occurs to arrange an alternative date for provision of the Services.

Your obligations

17. You will:
 - (a) promptly respond to all requests made by us and promptly do all things reasonably necessary to enable us to fully and effectively provide the Services;
 - (b) provide to us all necessary plans, specifications and other information required by us to provide the Services. We accept no responsibility for any loss, damages, or costs resulting from any inaccurate information provided by you. All information relating to the Services as provided by you must be provided in compliance with the Copyright Act 1994 and you will inform us of any proprietary rights that any other person may have in any information provided by you;
 - (c) provide us with the details of any preparation to the foundations where the kerb will be constructed which has been carried out by you or which will be carried out ahead of the Services;
 - (d) be responsible for any damage or failure of the Services resulting from incorrect or unsuitable foundation preparation;
 - (e) warrant that you have the right to grant us access to the Project Site to carry out and/or deliver the Services and provide, at no cost to us, clear and free access to the Project Site;
 - (f) ensure that all necessary power and any other services that we specify are required to perform the Services are available at the Project Site;
 - (g) be responsible for effecting and maintaining insurance in respect of the Project Site; and
 - (h) be responsible for coordinating any other contractor also working on the Project Site and acknowledge that any losses incurred as a result of delay owing to the work of another contractor on the Project Site will be borne by you.

Service Issues and Defects

18. You acknowledge that you will notify us within seven days of identifying any issue or defect with the Services, and allow us to correct the issue or defect with the Services within a reasonable timeframe. For any Service issues or defects notified to and accepted by us, your remedies are limited (to the maximum extent permitted by law), to one or more of the following (at our discretion):
 - (a) supplying the Services again; or
 - (b) paying the cost of having the Services supplied again.

Health and Safety

19. In this section, the following definitions shall have the following meanings:

Notifiable Incident means any notifiable injury or illness, notifiable incident, or notifiable event, as those terms are defined in the WHS Law.

WHS Law means the Health and Safety at Work Act 2015 and any corresponding work health and safety law as defined in section 4 of such Act;

WHS Regulations means any regulations, codes of practice or advisory standards made under or in connection with the WHS Law.
20. Each party agrees when providing or receiving the Services to comply with the requirements of applicable WHS Law and further agrees to comply with, and procure that its respective employees, agents and contractors comply with, the other party's

reasonable health and safety policies and directions notified to it when entering and while on the other party's premises.

21. In addition to clause 20, you must, and must ensure that any other contractors or personnel working at the Project Site shall:
- have a safe work environment that complies with WHS Law;
 - at all times, in the undertaking of this Agreement, identify and exercise all necessary precautions for the health and safety of all persons including your own staff and personnel, our personnel and members of the public who may be affected by the performance or by the purported performance of the Services contemplated under this Agreement;
 - notify us of any Notifiable Incident, other incident, near miss or injury arising out of or in respect of Services provided under this Agreement, as soon as you become aware of same;
 - notify us as soon as practicable of any concern you may have regarding work health and safety or your ability to meet your obligations under this clause 20;
 - immediately comply with directions on safety issued by any relevant regulator (including but not limited to WorkSafe and any Labour Inspector) or by us;
 - immediately provide us with copies of all notices and correspondence concerning the WHS Law or the WHS Regulations and their application arising out of or in respect of Services provided under this Agreement;
 - comply with any relevant standards notified to you by us.
22. Where there is any inconsistency between this clause 20 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.
23. You acknowledge that you will meet your obligations under this section solely at your own cost and expense, and without charge to or reimbursement from us. To the extent permitted by law, we will not be liable to you for any loss, damage or cost in connection with work health and safety in relation to your undertaking to comply with this Agreement and the health and safety requirements herein.

Insurance

24. We will take out and maintain for the duration of the Services, a policy of Professional Indemnity insurance for the amount and scope of our liability under this Agreement.

Privacy

25. You agree that we may collect, retain and use information about you (collected directly from you and from others where authorised) for the purposes of:
- assessing your creditworthiness;
 - providing Services to you;
 - sending invoices to you and to recover money owed to us, associated companies or contractors;
 - marketing to you services available from us, unless you tell us not to; and
 - exercising or enforcing any right that we have under this Agreement or at law.
26. You authorise us to disclose any information obtained for the purposes set out in clause 25, to those parties required by us to carry out the Services, including sharing it with associated companies, contractors and with marketing, credit reference agencies and collection agencies.
27. You may ask to see any information held by us as long as it is readily retrievable and you may ask for any details that are wrong to be corrected.
28. We will not, without your prior written consent, use any information provided by you other than in relation to provision of the Services.

Guarantees/Warranties

29. If you have entered into this Agreement in trade, you acknowledge and agree that the provisions of the Consumer Guarantees Act 1993 and sections 9, 12(a) and 13 of the Fair Trading Act 1986 are expressly excluded and that it is fair and reasonable to agree to such exclusions.
30. All warranties, guarantees or conditions, express or implied (including any implied warranties under the Contract and Commercial Law Act 2017) that may be excluded by any law of New Zealand or any other country are excluded to the maximum extent permitted by that applicable law.

Limitation of Liability

31. To the extent permitted by law, you acknowledge and agree that we will not be liable for any loss or damage resulting from any occurrence unless a claim is formally made and received by us within 12 months of the date of completion of the Services.
32. Where we commit a breach of this Agreement, our liability to you will be limited to reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. We will not be liable to you under this Agreement for any indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
33. To the extent permitted by law, the maximum aggregate amount payable by us, whether in contract, tort or otherwise, in relation to all claims, damages, liabilities, losses or expenses, will be limited to the price of the Services paid by you under this Agreement.
34. To the extent that either party to this Agreement is found liable to the other (whether in contract, tort or otherwise), and the claiming party and/or third party has contributed to the loss or damage, the party's liability will be limited to their contribution to the loss or damage incurred.

Force Majeure

35. Notwithstanding any other provision of this Agreement, non-performance by us of any of our obligations under this Agreement will be excused, without liability for non-

performance, during the time and to the extent that performance is prevented, wholly or substantially, by a Force Majeure Event. Performance of any obligation affected by a Force Majeure Event will be resumed as soon as reasonably practicable after the termination or abatement of the Force Majeure Event.

36. We will promptly advise you in writing, specifying the cause and extent of our inability to perform any of our obligations and the likely duration of such non-performance.

Dispute Resolution

37. If any dispute arises in connection with the interpretation or application of the provisions of this Agreement, its breach or termination, the validity of any documents provided by either party pursuant to the provisions of this Agreement, or any other matter arising out of or in connection with this Agreement (**Dispute**), then the following will apply:
- either party may, by written notice (**Dispute Notice**), require the other party to meet and attempt to resolve the Dispute;
 - the Dispute Notice will state the nature and subject matter of the Dispute and set a time and date (not to be later than five Business Days from the date of the Dispute Notice) for the parties to meet (whether by telephone, videoconference or physical meeting) to attempt to resolve the Dispute; and
 - the parties will use all reasonable endeavours to resolve the Dispute.
38. If the Dispute remains unresolved after the expiry of 10 Business Days from the date of the original Dispute Notice (**Negotiation Due Date**), any party may refer the Dispute to the mediation of one mediator. Failing agreement as to an appropriate mediator within three Business Days of the Negotiation Due Date, the mediator will be appointed at the request of any party by the chairperson or any other similar office holder for the time being of the New Zealand chapter of the Resolution Institute, or the nominee of such chairperson or other office holder. The guidelines which will govern the mediation will be set by the parties. Failing agreement within three Business Days after the date of appointment of the mediator, any party may request the mediator to set the guidelines (whether or not in conjunction with that party) which will govern the mediation.
39. The provisions of this clause will not preclude either party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

Default/Termination

40. Without prejudice to any of our other rights or remedies under this Agreement or at law, if you fail to pay any amount owing to us, or you breach this Agreement and the breach is not capable of remedy within seven days, or you become insolvent, commit an act of bankruptcy, enter into or are likely to enter into any arrangement with your creditors or in the case of a company do any act that would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of you, or if a receiver is appointed in respect of all or part of your assets, then:
- we may immediately cancel this Agreement and/or cease the provision of Services;
 - any amounts payable by you to us whether due for payment or not, will become immediately due and payable; and
 - you will pay all of our costs and expenses, including any debt collection costs and all legal costs and expenses (on a solicitor/own client basis together with disbursements) as a result of your late payment and/or incurred by us in enforcing or attempting to enforce our rights and remedies under this Agreement or at law.

General

41. If any provision of this Agreement is invalid or unenforceable for whatever reason, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect, provided such severance does not materially alter or frustrate the terms of this Agreement.
42. You must not subcontract, assign or transfer any of your rights or obligations under this Agreement to any other person without our consent. If you are a company, any change in the legal or beneficial control of the company will be deemed an assignment for the purposes of this clause and will require our prior written consent.
43. A reference to any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and regulation, order-in-council and other instrument from time to time issued or made under, that legislation.
44. If, at any time, we do not enforce any of this Agreement or grant you time or other indulgence, we will not be construed as having waived that term or its rights to later enforce that or any other term.
45. This Agreement is subject to and governed by the laws of New Zealand. Any dispute will be determined by the exclusive jurisdiction of the New Zealand Courts.