

BROADREACH LIMITED T/A NW DESIGNS TERMS AND CONDITIONS OF TRADE

1. Parties And Definitions To This Agreement

- 1.1. "NWD" for the purposes of this agreement, shall mean Broadreach Limited T/A NW Designs, any person or entity acting for or on behalf of NW Designs Limited or with the permission or authority of NW Designs.
- 1.2. "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 NWD to the Customer.
- 1.3. "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 NWD on a principal debtor basis.
- 1.4. "Services" shall mean all services supplied by NWD to the Customer and includes any recommendations or consultancy advice.
- 1.5. "Price" shall mean the price payable for the goods and/or service as agreed between NWD and the Customer in accordance with clause 3 of this contract.

2. Goods And Services

- 2.1. The Goods and Services provided shall be described on our invoices, quotation, and/or work authorisation, or any other such form as provided by NWD (Broadreach Limited T/A NW Designs) to the Buyer.
3. **Price And Payment**
 - 3.1. The price shall be At NWD's sole discretion, one or more of the following:
 - (a) The price as quoted by NWD to the Customer. The quoted price shall not alter providing the Customer accepts NWD's quote in writing within thirty (30) days of the date of the quotation.
 - (b) NWD's price as specified on NWD's current price list and/or hourly rate as when the goods and/or service is provided.
 - 3.2. Any change or variation to the specified work, design, plan or service provided, will be charged on the same rates as per NWD's quoted price. Charges for the variation to the quoted work will be invoiced as a variation to the quotation or agreed work and shall be payable immediately on the completion of the work.

4. Payment Terms

- 4.1. At NWD's sole discretion a 50% deposit is required and payable on acceptance of the quoted price, placement of an order to supply or before commencement of any work or supply of any goods.
- 4.2. Payment to approved customers shall be made by instalments in accordance with NWD's payment schedule.
 - (a) Payment in full less any deposit paid, shall be due for the Goods and/or Services provided to the Customer prior to or upon delivery or as otherwise stated on the invoice, quotation, work authorisation or any other form as provided, time being of the essence in which the invoice is delivered to the Customer or posted to the Customer's address or address for notices.
 - (b) Payment shall not be deemed to have been received unless the payment is made in cash or cleared funds are deposited in NWD's nominated account. Any other form of payment will not be receipted as paid until the transaction is deemed to be honoured.
 - (c) Payments will be made as agreed between NWD and the Customer. If no payment arrangement is made or payment terms agreed, then payment shall be due as stated on the Invoice, quotation or work order and in cash, cheque, or by direct credit to NWD's nominated account.
- 4.3. GST and other taxes and duties that may apply will be added to the Price unless they are expressly included in the Price.

5. Acceptance Of Terms Of Trade

- 5.1. Any engagement of NWD's Services including the supply of goods to the Customer shall constitute acceptance of the Terms and Conditions of Trade of NWD 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.
- 5.2. 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 to NWD to undertake work or provide goods or services.
- 5.3. The Terms and conditions of this agreement can only be amended with the written consent of NWD and shall be binding on the Customer.
- 5.4. In the event that the Customer proposes any change to the structure of the Customers 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 NWD the Customer shall be liable for any loss suffered by NWD due to the Customer not complying with this provision.

6. Title to Goods

- 6.1. Ownership and Title of any goods supplied by NWD to the Customer shall not take effect until:
 - (a) The Customer has paid NWD all invoiced amounts owing for the Goods and fulfilled all obligations to NWD in relation to this agreements.
 - (b) Any form of payment made by the Customer to NWD other than cash shall not be deemed to be payment until that form of payment has been cleared in accordance with clause 4.1(b) and until then NWD'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 NWD'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.

7. Indemnity From Claims

- 7.1. The Buyer warrants that no instruction, Plan, Design or drawing provided to NWD 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.

8. Defects

- 8.1. The Customer shall inspect the Goods and Services provided by

- 8.2. NWD and shall within ninety seven (7) days of delivery (time being of the essence) notify NWD of any alleged defect, damage or failure to comply with the description or quote. The Customer shall afford NWD an opportunity to inspect the area serviced 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, NWD's liability is limited to undertaking remedial work on the agreed fault.

9. 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 NWD to the Customer (if any) and all Goods that will be supplied in the future by NWD to the Customer.
- The Customer undertakes to:
- (c) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which NWD may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (d) Indemnify, and upon demand reimburse, NWD for all expenses incurred in registering a financing statement or financing change 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 NWD; and
 - (f) Immediately advise NWD of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.1. NWD 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 NWD, 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 NWD under clauses 10.1 to 10.

10. Warranty

- 10.1. For Goods not supplied by NWD, the warranty shall be the current warranty provided by the manufacturer of the Goods. NWD 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.
 - 10.2. Subject to the warranty conditions as set out in Clause 10.1 NWD warrants that if any fault in any of NWD's workmanship comes to the Customer's attention and is reported to the NWD within twelve (12) months of the date of completion (time being of the essence) NWD will either (at the NWD's sole discretion) replace or remedy the defective workmanship.
11. **Default and Consequences of Non Payment**
 - 11.1. If the Customer defaults in payment of any invoice when due, the Customer shall pay all costs and disbursements incurred by NWD in pursuing the debt including legal costs on a solicitor and own client basis and NWD's collection agency costs. Disbursements incurred by NWD in pursuing the debt including legal costs on a solicitor and own client basis and NWD's collection agency costs.
 - 11.2. 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.
 - 11.3. NWD 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 NWD (including those relating to payment). NWD will not be liable for any loss or damages the Customer has deemed to have suffered because NWD has exercised its rights under this clause.
 - 11.4. If any account remains overdue after thirty (30) days then an amount of \$20.00 or 10.00% 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.
 - 11.5. Without prejudice to NWD other remedies at law, NWD shall be entitled to cancel all or any part of any supply agreement with the Customer which remains unfulfilled and all amounts owing to NWD shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to NWD becomes overdue of payment, or in NWD's opinion the Customer will be unable to meet its payments as they become due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, liquidator, manager (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

12. Right of Cancellation

- 12.1. NWD may cancel any contract to which these Terms and Conditions apply or cancel the delivery of materials products or goods or Service at any time before the materials, goods plants, trees shrubs and alike are delivered by giving written notice to the Customer. On giving notice NWD shall repay to the Customer any sums paid in respect of the Price. NWD shall not be liable for any damages or losses arising from such cancellation.
- 12.2. Should the Customer cancel any contract with NWD the Customer shall be liable for any loss incurred by NWD (including but not limited to loss of profits) up to the time of Cancellation.

13. Delivery

- 13.1. At NWD's sole discretion delivery of the goods shall take place by any of the following means:
 - (a) The Customer takes possession of the goods at NWD's address; or
 - (b) The Customer takes possession of the goods at the Customer's nominated address (in the event that the goods are delivered by NWD or the NWD's nominated carrier).
- 13.2. At NWD's sole discretion the costs of delivery shall be additional to the Price.
- 13.3. The Customer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the

Goods as arranged then NWD shall be entitled to charge a reasonable fee for redelivery.

- 13.5. Delivery of the goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 13.6. NWD may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Terms of Trade.
 - 13.7. The failure of NWD to deliver shall not entitle either party to treat the contract as repudiated.
14. **Security Agreement**
 - 14.1. Despite anything to the contrary contained in these Terms and Conditions or any other rights which NWD may have:
 - (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty, asset or property capable of being charged, the Customer and/or the Customers Guarantor agree to mortgage and/or charge all or any of their joint and/or several interest in the said land, realty, asset or property to NWD or NWD's nominee to secure all amounts and other monetary obligations due and payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that NWD (or NWD's nominee) shall be entitled to lodge where appropriate a caveat over the said land, realty asset or property. Once all payments and other monetary obligations payable to NWD hereunder have been met the caveat shall be removed.
 - (b) The Customer and/or Guarantor shall indemnify NWD against all NWD's costs, any disbursements and any legal costs incurred on a solicitor client own basis in the event NWD elect to proceed in any manner in accordance with this clause and/or its sub-clauses.
 - (c) The Customer and/or the Guarantor (if any) agree to irrevocably appoint NWD's nominated attorney as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

15. Privacy Act 1993

- 15.1. The Customer and the Guarantor/s (if separate to the Customer) authorises NWD to: collect, use and retain any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
Disclose information about the Customer, whether collected by NWD from the Customer directly or obtained by NWD from any other party, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
 - 15.2. here the Customer and/or Guarantors are an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 15.3. The Customer and/or Guarantors shall have the right to request NWD for a copy of the information about the Customer and/or Guarantors retained by NWD and the right to request NWD to correct any incorrect information about the Customer and/or Guarantors held by NWD.
16. **The Consumer Guarantees Act 1993**
 - 16.1. 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 BSNL to the Client.

17. Risk

- 17.1. If NWD retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer when the goods are delivered.
- 17.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, NWD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by NWD is sufficient evidence of NWD's rights to receive the insurance proceeds without the need for any person dealing with NWD to make further enquiries.

Dispute Resolution

18. All disputes and differences between the Customer and NWD 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
19. **General**
 - 19.1. 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.
 - 19.2. 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 Nelson New Zealand.
 - 19.3. NWD 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 NWD of these terms and conditions.
 - 19.4. In the event of any breach of this contract by NWD 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 NWD by the Customer in Part or Full whichever is the lesser amount.
 - 19.5. 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 NWD.
 - 19.6. NWD may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
 - 19.7. NWD 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 NWD notifies the Customer of such change.
 - 19.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
 - 19.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
 - 19.10. 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 NWD's right to subsequently enforce that provision.