



Diggatruck Limited

Terms Of Trade

The Contract

1. **Acceptance:** By accepting the quote and agreeing to these terms, both parties enter into a contractual agreement.
2. **Parties:** The contract is between Diggatruck Limited (referred to as "Us") and the named customer.
3. **Scope:** The contract pertains to the services provided by Diggatruck Limited. This could include the nature of the services, any specific tasks, or projects outlined in accompanying plans and specifications.
4. **Inclusive Parties:** The term "**us**" encompasses not only Diggatruck Limited itself but also any contractors, employees, assignees, transferees, or approved subcontractors used by the company.
5. **Incorporated Documents:** All plans and specifications mentioned alongside these terms, as well as any variations to them, are considered integral parts of the contract.

Services

1. **Services:** This section clarifies that the term "**services**" includes any work performed or materials supplied as outlined in the provided Quote. It emphasizes that both works and goods/materials fall under the definition of services depending on the context.
2. **Design:** If additional measurements are necessary to verify the accuracy and suitability of plans or drawings provided by the customer, their architect, or main builder, these are referred to as "**Design**". A copy of any Design will be made available to the customer upon request, but only after acceptance of the Quote and the Terms.
3. **Subcontractors:** It states that either Diggatruck Limited or its approved subcontractors will carry out the services for the customer. This clarifies that the services may be performed by subcontractors authorized by Diggatruck Limited.
4. **Exclusions:** Any exclusions specific to the job are listed in the Quote and are considered part of the contract's terms. This ensures that both parties are aware of any aspects of the project not covered by the contract.

Your Obligations

1. **Payment of Charges:** The customer is obligated to pay the total amount of charges as stated in the accepted Quote. This includes any Variation Orders issued after the Quote acceptance, resulting in the Total Price. The payment can be either a fixed total amount or based on time and materials, depending on the terms specified in the Quote.
2. **Progress Payments:** The customer agrees to make payments in installments, referred to as Progress Payments, at agreed-upon milestones or frequencies during the performance of the services by Diggatruck Limited. The timing and amounts of these payments are outlined in the Quote. The customer must ensure that funds are available to meet these payments and cannot defer them to a final lump sum payment without agreement from Diggatruck Limited.
3. **Customer Obligations:** The customer is responsible for performing any actions or making arrangements noted as "customer obligations" in the Quote. These actions or arrangements must be completed before Diggatruck Limited commences the job.
4. **Scope Changes to a minimum:** The customer acknowledges that requesting Variations (such as changes to selections, scope, or the order of any stage of the works) may not always be feasible within the expected timeframe. It is requested that customers keep scope changes to a minimum to avoid disappointment if Diggatruck Limited cannot accommodate the requested changes. This clause emphasizes the importance of minimizing scope changes to ensure smooth project execution.

Our Obligations

1. **Services:** Diggatruck Limited commits to performing the services according to accepted industry standards, including compliance with relevant legislation such as the Building Act 2004 and the Health and Safety at Work Act 2015.
2. **Record of Work:** If required by law, Diggatruck Limited will provide the customer with any necessary certificates or documents to confirm the completion of the works.
3. **Updates on Timing:** Diggatruck Limited agrees to inform the customer of any anticipated delays in providing the services. However, the customer acknowledges and agrees that they are not entitled to any damages or costs in the event of delays in completing the services beyond the anticipated or proposed date.
4. **No Exclusivity of Services:** Diggatruck Limited may manage multiple jobs for other clients in addition to the services provided to the customer. The company will communicate the dates or times they can attend the customer's property or site to perform the works. Unless expressly agreed otherwise in writing, Diggatruck Limited is not obligated to provide exclusive service to the customer's job and may not attend the site on repeated, concurrent days.

Deposit

1. **Deposit and Time for Payment of Deposit:** The customer agrees that paying the deposit is necessary to confirm acceptance of the Quote. It's specified that certain amounts may not be refundable if the customer decides to terminate the contract before Diggatruck Limited starts providing the services.
2. **Refund of Deposit:** If the customer terminates the contract before the services commence, Diggatruck Limited is entitled to retain certain amounts from the deposit. This includes the entire amount incurred for materials purchased and/or manufactured, as well as an additional 15% of the Total Price to cover administration and expenses up to the termination date.
3. **Balances Owing for Custom Materials:** If the contract is terminated before the services begin and the deposit doesn't cover the balance owed for materials made or ordered to custom specifications (Custom Materials), the customer will be invoiced for the balance, which becomes immediately due and payable.
4. **Delivery of Custom Materials:** If the contract is terminated before services begin, any Custom Materials paid for from the deposit will be delivered to the customer. Ownership and risk associated with these materials pass to the customer upon delivery to their property or possession.

Variations

1. **Variations:** Diggatruck Limited reserves the right to issue a Variation Order to change the Total Price or extend the time to complete the services under various circumstances. These circumstances include encountering unforeseen difficulties, changes in plans or specifications, increases in labor or material costs beyond their control, or delays caused by the customer's non-performance of obligations.
2. **How We Will Confirm a Variation:** Diggatruck Limited will provide a written Variation Order detailing the changes to the Quote, how the price change is calculated, and any additional costs associated with the Variation. This Variation Order will be supplemental to the original Quote.
3. **How We Charge for a Variation:** Variations will be charged on a time and materials basis.
4. **Variation Becomes Part of the Quote:** Any Variation Order issued becomes part of the contract, and the amount payable for the Variation is added to the Total Price.
5. **Continuation of Services During Discovery of a Variation:** If a Variation is identified after services have commenced, but continuing is necessary due to time constraints related to weather or other factors, Diggatruck Limited will continue with the services to mitigate risks. The customer agrees to this continuation despite the Variation.
6. **How We Will Confirm a Variation If We Need to Continue the Works That Day:** Diggatruck Limited will make reasonable efforts to inform the customer of a Variation event in advance. However, if this is not achievable and continuation of services is deemed necessary, the Variation Order issued afterward will still be valid, and any additional costs will be applicable.
7. **Consents, Approvals, or Compliance Certificates:** The customer is responsible for obtaining any necessary local or regional authority approvals or consents for the services. Diggatruck Limited reserves the right to issue its final invoice regardless of whether a certificate of completion has been issued by the company or the customer's main contractor.

Invoicing & Payment Claims

1. **Time and Method for Payment:** Invoices issued by Diggatruck Limited require payment within 7 days, unless otherwise specified in writing. Trade or extended credit terms are not offered, and invoices are sent via email. Payment methods specified on the invoice are accepted.
2. **No Set Off or Deduction:** Payments must be made without set-off or deduction of any kind, and the customer agrees not to withhold payment for undisputed amounts.
3. **Disputing Invoice Amounts:** If the customer disputes the amount stated in an invoice, they must issue a valid payment schedule within 7 working days of receiving the invoice. Failure to do so allows Diggatruck Limited to treat the invoice amount as immediately due and payable. Disputes not resolved may be subject to dispute resolution procedures.
4. **Non-Payment:** Failure to pay an amount owing by the due date results in an overdue amount. After 7 calendar days, late payment interest may be applied at a specified rate. This interest may be compounded monthly.
5. **Debt Collection Costs:** If an overdue amount remains unpaid for 14 days or more, Diggatruck Limited reserves the right to engage debt collection services to recover the amount owed. The customer is liable for associated collection costs.
6. **Administration Fees:** Diggatruck Limited may apply reasonable administration fees for additional actions required to recover overdue amounts.
7. **Suspension of Services:** If an overdue amount remains unpaid for 7 calendar days, Diggatruck Limited is entitled to immediately suspend services without notice, following the provisions of the Construction Contracts Act 2002.

Termination

Termination by Us: Diggatruck Limited reserves the right to terminate the contract under certain circumstances where it's unable to deliver its services. This termination will be communicated to the customer in writing and doesn't waive any rights Diggatruck Limited may have under the contract. The customer remains liable for any outstanding payments for services already performed, including those commenced but not completed, under the following circumstances:

- a. **Breach of Payment Obligations:** If the customer fails to pay the deposit or any other amount owed.
- b. **Insolvency:** If the customer becomes insolvent, bankrupt, convenes a meeting with creditors, or assigns assets for the benefit of creditors, or if a receiver, manager, or liquidator is appointed in respect to the customer or their business.
- c. **No Access to Property:** If Diggatruck Limited or its approved contractors are denied access to or unable to access the property for any reason. This includes situations where access is deemed unsafe and would violate safety requirements under the Health and Safety at Work Act 2015, and such safety concerns are not remedied by the customer.
- d. **Contamination of Worksite:** If the worksite or project is contaminated by unauthorized persons, including the customer, this includes any unauthorized alterations, adjustments,

repositioning, or movement of materials, equipment, fixtures, and structures. Examples of contamination are provided, but the clause is not limited to these examples.

Quality Guarantee

1. **Consumer Guarantees Act:** If the customer is acquiring services for business purposes, the provisions of the Consumer Guarantees Act 1993 (CGA) do not apply. However, if the services are acquired for non-business purposes, the CGA provisions apply.
2. **Defect Liability Period:** Diggatruck Limited will remedy any defects in the services at no cost to the customer for a period of 12 months from the date of practical completion, provided the customer notifies them within this period. This guarantee is in addition to any implied warranties under the Building Act 2004.
3. **When We Are Not Liable to Remedy a Defect:** Diggatruck Limited's workmanship guarantee does not apply if the defect is not notified within the Defect Liability Period or if the defect is caused by factors such as customer actions, lack of maintenance, natural events, misuse of goods, or unauthorized repairs or modifications.
4. **Manufacturer Warranty Claims:** If the Defect Liability Period has ended and there is still a manufacturer product warranty available for any component part of the goods, the customer must deal directly with the manufacturer for any warranty claims during the manufacturer's guarantee period.

Risk & Ownership

1. **Insurance Risk:** Diggatruck Limited holds general liability insurance, and all risk associated with plant, materials, and equipment necessary to provide the services is borne by them during the performance of the services.
2. **Plant and Machinery May Be Left at Site:** The customer agrees that Diggatruck Limited may store any plant or machinery at the customer's property during the performance of the services.
3. **Risk Passes to You on Completion:** Upon completion of the services, if any goods have been installed at the customer's property, the risk to insure those goods transfers to the customer. However, ownership of the goods remains with Diggatruck Limited until all amounts owing for goods or services have been paid.
4. **Title to Goods:** Diggatruck Limited retains ownership of the goods until the customer has paid for them in full. No beneficial or equitable ownership in the goods passes to the customer until full payment of the total price has been received.
5. **Right to Enter Property to Seize Goods:** If the customer fails to comply with the contract regarding payment of amounts owing, Diggatruck Limited reserves the right to enter the property and seize possession of the goods, retaining, selling, or otherwise disposing of them.

Limitation of Liability

1. **Delays to Commence Works:** If the services cannot proceed as scheduled for any reason, Diggatruck Limited will discuss this with the customer, and it will be considered a Variation. They exclude liability for any claims, losses, damages, or costs incurred by the customer due to the services not taking place as planned.
2. **Damage to Your Property:** Diggatruck Limited's total liability to the customer arising from the services is limited to the Total Price of the goods or services or the actual direct costs incurred by the customer, whichever is lower. This liability is subject to any insurance held by Diggatruck Limited and may be reduced or eliminated if the customer's acts or omissions contribute to the loss or damage.
3. **Exclusion of Liability:** Diggatruck Limited excludes all liability to the customer for any direct or indirect claims, expenses, losses, damages, and costs resulting from or connected with the services, except as required during the Defect Liability Period or under applicable laws that impose guarantees on Diggatruck Limited.
4. **When Limitations of Liability Cannot Apply:** These clauses do not limit Diggatruck Limited's liability to the extent that it cannot be limited by law or in cases of willful default, fraud, or criminal conduct by Diggatruck Limited.

General

1. **Headings:** This simply clarifies that any headings or titles within the contract are for organizational purposes only and don't carry legal weight in interpreting the contract.
2. **Singular and Plural:** This provision clarifies that when the contract uses a singular term, it includes the plural form of that term, and vice versa. This ensures that the contract covers both singular and plural instances of the described entities or actions.
3. **Persons:** Here, "persons" is defined broadly to encompass not just individuals but also legal entities, whether incorporated (like companies) or unincorporated (like partnerships).
4. **Gender Neutrality:** This provision ensures that the contract is not interpreted in a way that favors one gender over another. Terms that might traditionally be associated with a specific gender are meant to include both genders.
5. **References:** When the contract refers to a specific clause or subclause, it's referring to those clauses within the same document unless explicitly stated otherwise.
6. **Inclusive Terminology:** The use of the word "including" is clarified to mean that what follows is not an exhaustive list and that other items not listed may also be included.

If at any time any part of the Contract is deemed illegal, invalid, or unenforceable under New Zealand law, it won't affect the legality, validity, or enforceability of the other provisions in the contract.

1. **Governing Law:** The laws of New Zealand will dictate the interpretation, validity, and enforcement of the contract. This means that any disputes or legal matters arising from the contract will be resolved according to New Zealand law.

2. **Jurisdiction:** The parties involved agree to submit to the non-exclusive jurisdiction of the courts of New Zealand. "Non-exclusive jurisdiction" means that while the parties agree that New Zealand courts have authority over any disputes related to the contract, they are not precluded from seeking resolution in courts of other jurisdictions if they so choose. However, if they do bring a case to court, they consent to the jurisdiction of the New Zealand courts.

Privacy Act 1993

1. **Collection of Personal Information:** Diggatruck Limited, requires personal information from the Customer. This personal information is primarily needed for the purposes of quotation, invoicing and credit assessment by Diggatruck Limited.
2. **Consequences of Not Providing Information:** The Customer's service agreement or contract may be declined or the terminated if they fail to provide the requested personal information.
3. **Access and Correction:** The Customer has the right to access and request corrections to their personal information held by the Diggatruck Limited by contacting them.
4. **Use of Personal Information:** The Customer agrees that the Diggatruck Limited can use their personal information to inform them about other goods and services offered by the Diggatruck Limited.
5. **Disclosure of Personal Information:** The Customer authorizes the disclosure of their personal information held by any other party regarding any previous construction contracts entered into by the Customer. Additionally, the Customer agrees to the Diggatruck Limited releasing information about the contract to other parties if the Customer fails to comply with their obligations.
6. **Authorization for Credit Assessment:** The Customer and any person who signs the Diggatruck Limited's Application for Credit authorizes the Diggatruck Limited to collect, retain, and use information about the Customer or signatory from any person to assess the creditworthiness of the Customer or signatory.
7. **Disclosure of Credit Information:** Diggatruck Limited is authorized to disclose information about the Customer or signatory to any person who guarantees, provides insurance, or provides any other credit support in relation to the Customer's obligations to the Diggatruck Limited. This information may also be disclosed to other necessary or desirable parties to enable the Diggatruck Limited to exercise any rights under the contract.
8. **Authorization:** The customer grants Diggatruck Ltd. permission to utilize photos and details of the work carried out for advertising purposes.
9. **Scope of Usage:** The authorized material may be used in various publications, including social media platforms, flyers, and newsletters.

Dispute Resolution

1. **Dispute Resolution:** If either party believes that a dispute has arisen concerning any matter governed by the contract, they must provide written notice to the other party outlining the basis of the dispute. The parties must then attempt to resolve the dispute through discussion or by appointing a third party to assist in resolution. If resolution cannot be achieved, the aggrieved party may refer the dispute for adjudication by the Building Disputes Tribunal. However, during the dispute resolution process, the customer must continue to fulfill their payment obligations under the contract, unless the dispute specifically relates to a disputed amount on an invoice. In that case, the customer must pay the undisputed portion of the invoice.

Acknowledgement of these terms

I confirm my understanding and acceptance of Diggatruck Limited's Terms of Trade and acknowledge that I have read and understand them. Where appropriate I have sought legal advice as needed. I understand that by agreeing to these terms, I am legally bound by the contract.

Print Name.....

Signature.....

Date.....