



## TERMS OF TRADE

### 1. DEFINITION

**“Customer”** means the person who purchases or orders goods or services from Downs Construction Ltd, and where the customer comprises two or more persons, means those persons jointly and severally.

**“Goods”** means any goods provided and/or manufactured by Downs Construction Ltd.

**“Order”** means an offer to purchase goods and/or services from Downs Construction Ltd by the customer.

**“Quote”** means a written offer from Downs Construction Ltd to the customer to supply goods and/or services for a specified price subject to the terms and conditions of such offer.

**“Services”** means any services provided by Downs Construction Ltd.

### 2. ACCEPTANCE

Any instructions received by Downs Construction Ltd from the customer for the supply of goods and/or services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. COLLECTION AND USE OF INFORMATION

**3.1** The customer authorises Downs Construction Ltd to collect, retain and use any information about the customer, for the purpose of assessing the customer’s credit worthiness, enforcing any rights under this contract or marketing any services provided by Downs Construction Ltd to any other party.

**3.2** The customer authorises Downs Construction Ltd to disclose any information obtained to any person for the purposes set out in clause 3.1

**3.3** Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 4. QUOTES, ORDERS, PRICING & ESTIMATES

**4.1** These terms of trade apply to all goods and services supplied by Downs Construction Ltd including those supplied pursuant to a quote. A customer’s acceptance of a quote constitutes agreement to purchase goods and/or services on these terms.

**4.2** Downs Construction Ltd may decline, in whole or in part, any order in its sole discretion.

**4.3** The price of goods and services is as specified in an accepted order or accepted quote as applicable.

- 4.4** Where no price is stated in writing the goods and/or services shall be deemed to be sold at the current amount as such goods and/or services are sold by Downs Construction Ltd at the time the goods and/or services are provided.
- 4.5** Unless otherwise stated, prices stated do not include GST.
- 4.6** A quote may be withdrawn or varied by Downs Construction Ltd before it has been accepted in writing by the customer.
- 4.7** All quotes are based on rates and charges in effect of the date of the relevant quote. Any increase in rates or charges (including without limitation sub-contracted labour, materials and fuel) shall result in an equivalent increase in the quoted price.
- 4.8** A quote shall lapse if not accepted within 30 days from the date of the relevant quote.
- 4.9** An estimate to price is not binding on Downs Construction Ltd.
- 4.10** Where a quote includes an estimate of quantities and the actual quantity supplied is materially different from that estimated, Downs Construction Ltd reserves the right to revise the quoted price.
- 4.11** Quotes are prepared in accordance with information provided to Downs Construction Ltd by the customer and Downs Construction Ltd will not be liable nor will it be bound by the quote where:
- (a) *Such information is inaccurate or any information is omitted; and/or*
- (b) *The customer makes any variations which result in the work being different from that quoted for.*
- 4.12** Where goods and/or services are required in addition to the quotation the customer agrees to pay for the additional cost of such goods and/or services.
- 4.13** The issue of an order from the customer constitutes acceptance by the customer of these terms or trade even if the contrary is stated in the customer's order or correspondence.

## **5. PAYMENT**

- 5.1** A deposit equivalent to the total cost of any goods to be supplied is to be paid to Downs Construction Ltd before any goods and/or services are provided to the customer.
- 5.2** Payment for services is to be made in accordance with any schedule of payment specified in the schedule for building and/or landscaping work or if no such schedule exist, payment shall be made within 7 working days from the date of invoice.
- 5.3** Payment by cheque or by any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into Downs Construction Ltd account.
- 5.4** The purchaser shall pay goods and services tax in respect of the supply of all goods and services.
- 5.5** If payment is not made in full by the due date, Downs Construction Ltd is entitled to charge the customer interest on the unpaid overdue balance from the due date for payment at the rate of 5% per annum above the current balance owing on the first day of each month until payment in full is received by Downs Construction Ltd.
- 5.6** The customer shall be liable for any collection cost incurred Downs Construction Ltd in recovering any unpaid sums owing including but not limited to, fully solicitor/client cost.

## **6. IMMEDIATE PAYMENT**

**6.1** Notwithstanding clause 3, all payments shall become due to Downs Construction Ltd in the event that a receiver is appointed over any of the customer's assets or undertaking, a liquidator is appointed or the customer goes into voluntary liquidation, the customer makes or attempts to make an arrangement or composition with creditors, or the customer becomes insolvent within the meaning of the insolvency Act 1967 or the companies Act 1993, or commits any act of bankruptcy.

## **7. PERSONAL GUARANTEE**

**7.1** Where the customer is a company, the directors of the company, by signing in their personal capacity at the bottom of this document, undertake to personally pay Downs Construction Ltd the unpaid overdue balance and any interest accrued immediately on Downs Construction Ltd written request. The directors shall also be liable for full collection cost including full solicitor/client cost.

**7.2** Where more than one of director has signed each shall be jointly and severally liable.

## **8. OWNERSHIP OF GOODS**

**8.1** Title to the risk in any goods purchased by the customer shall pass upon delivery.

## **9. CONSUMER GUARANTEES ACT 1993**

**9.1** Where goods or services are being supplied for the purpose of a business, the customer agrees that the consumer guarantees Act 1993 will not apply.

## **10. LIMITATION OF LIABILITY**

**10.1** The liability of Downs Construction Ltd in respect of all claims for loss, damage or injury arising from breach of any of Downs Construction Ltd's obligations under this agreement or from any act or omission of Downs Construction Ltd is limited, in each case, to the lesser of:

- (a) *Replacement or repair of the affected goods, or re-supplying of the services;*
- (b) *Payment of the actual cost of replacing or repairing the affected goods, or re-supplying the services; or*
- (c) *The price of the affected goods and services*

Unless the consumer guarantees Act 1993 applies, in which case the remedies provided in that Act shall apply.

**10.2** Downs Construction Ltd shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of goods or services by Downs Construction Ltd, except as set out in clause 10.1. For the avoidance of doubt, where the consumer guarantees Act 1993 applies, Downs Construction Ltd liability for consequential losses shall accord with the provisions in the Act.

## **11. INTELLECTUAL PROPERTY**

**11.1** all intellectual property rights that may exist in the goods or arising out of the performance of the services are and shall remain in the property of Downs Construction Ltd.

## **12. CANCELLATION**

**12.1** The customer is not entitled to cancel an order without the written agreement of Downs Construction Ltd where:

- (a) *Manufacture of made to order goods has commenced, and/or*
- (b) *Such order comprises goods manufactured by a third party.*

**12.2** In the case of made-to-order goods, Downs Construction Ltd may require the customer to make a full upfront payment for the goods or to pay a substantial deposit before Downs Construction Ltd commences manufacture of the goods, and the customer is liable to pay for the full amount of the goods ordered, whether or not the customer takes delivery of all such goods.

## **13. WARRANTIES**

### **14. HOURS**

**14.1** unless otherwise agreed between the parties, Downs Construction Ltd will supply the goods and/or preform the services during the normal working hours between 8am to 5pm Monday to Friday excluding public holidays. Any cost attributable to Downs Construction Ltd being required by the customer to work outside such hours shall be payable by the customer.

### **15. FORCE MAJEURE**

**15.1** No claim or liability will arise against Downs Construction Ltd under these terms or any order or quote, if and to the extent that Downs Construction Ltd failure or omission to carry out or observe and provisions of these terms or any order or quote arises by reason or force majeure. "force Majeure" means any event outside the reasonable control of Downs Construction Ltd and includes, without limitation, fires or other causalities or accidents, power outages, acts of god, strikes and lockouts, severe weather conditions, pandemics, delay in supply of materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

### **16. MISCELLANEOUS**

**16.1** Downs Construction Ltd's failure or delay to exercise or enforce any right it has under these terms shall not operate as a waiver of Downs Construction Ltd's right to exercise or enforce such right or any other right in the future.

**16.2** Any provision in these terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of these terms.

**16.3** Downs Construction Ltd may, in its sole discretion, amend these terms from time to time.

**16.4** The attached schedule for building and/or landscaping work (if any) forms part of this agreement.