

Charly The Sparky Ltd - Terms of Trade

1. DEFINITIONS

1.1. In this agreement:

"Company", "we", "our" and "us" means Charly The Sparky Ltd, our permitted assigns, and successors, and where the context permits shall include our employees and subcontractors.

"Confidential Material" means

- (a) all information and other material relating to the Company's business, employees, goods, or services which we make available or have previously made available to you; or
- (b) any report or material which we produce as a direct or indirect result of any work that we carry out for you and anything that you derive from this information and material but excludes everything which is generally available to the public or that you or a third party have independently developed or acquired.

"Customer", "you" and "your" means the customer named in the Statement of Work.

"Goods" means any goods supplied by the Company to the Customer from time to time.

"PPSA" means the Personal Property Securities Act 1999.

"Services Interruption Event" means an interruption to the Works caused by an event that is outside the Company's reasonable control or your failure to carry out or perform any obligation under this agreement.

"Statement of Work" means the document that sets out the Works that we agree to provide to you.

"Warranty Period" means the warranty period set out in the manufacturer's warranty for the relevant Goods.

"Workmanship" means the services performed by the Company under this agreement.

"Workmanship Warranty" has the meaning set out in clause 13.2.

"Works" means all Goods, Workmanship and sub-contractors' services supplied by the Company to the Customer.

2. PAYMENTS

2.1. The Customer shall make all payments by the due date of the invoice unless otherwise arranged in advance and confirmed in writing by the Company.

2.2. The Company may withdraw or refuse credit facilities or to require payment of a deposit before any Works are provided.

2.3. Interest shall be paid at 10% per month calculated on-a monthly-basis, on all outstanding amounts from the date on which the payment was due until actual date of payment. Any expenses, disbursements, and costs (including solicitors fees or debt collection agency fees) incurred by the Company in the event of Customer default are payable by the Customer.

2.4. The Company reserves the right to change the price of the Works:

- (a) if the Statement of Work is changed; or
- (b) where additional Works are required due to the discovery of hidden or identified difficulties (including, but not limited to, poor weather conditions, poor access to site, unavailability of machinery, unsafe conditions, work by any third party not completed, hidden building defects, change of specifications, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and/or wiring in walls) after commencement of the Works; or
- (c) if there are increases to the Company in the cost of labour, subcontractors' services or Goods beyond the Company's control.

3. FREIGHT

3.1. All prices for Goods exclude freight charges unless otherwise specified and advised in writing to you. The Company may levy a freight surcharge where urgent delivery is requested by the Customer.

3.2. All claims for loss of or damage to Goods in transit must be made to the relevant carrier within 30 days from the date of invoice.

4. SUPPLY AND DELIVERY

4.1. All Works shall be deemed to have been supplied when notified by the Company. The Customer shall immediately upon receipt of Goods supplied fully inspect such Goods and satisfy itself that the Goods are correct.

4.2. If you claim that some Works have not been supplied (or have been supplied incorrectly), you must notify the Company in writing within 14 days of notification of supply.

4.3. Delivery of Goods shall be deemed to be effected by the Company delivering the Goods to the delivery address nominated by the Customer.

4.4. Goods will not be accepted for return for credit without the Company's prior approval.

4.5. Goods shall only be returned to the Company with its prior written consent and within 14 days after delivery. Should the Company discover that the Goods are not defective, the Company may charge the Customer a handling fee.

4.6. Goods not returned in accordance with this clause 4. may be rejected by the Company.

4.7. All costs for the return or delivery of the Goods shall be payable by the Customer.

5. INSURANCE

5.1. The Company shall maintain a public liability insurance policy in respect of loss or damage to any property or injury or death or illness to any person in connection with the execution of the Works.

6. ACCURACY OF CUSTOMER'S PLANS AND MEASUREMENTS

6.1. The Company may rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges that if any of this information provided by the Customer is inaccurate the Company accepts no responsibility for any loss, damage or cost resulting from inaccurate plans, specifications, or other information.

6.2. If the Customer gives the Company information relating to measurements and quantities of Goods required in completing the Works, it is the Customer's responsibility to verify the accuracy of the measurements and quantities before the Company places an order based on these measurements and quantities.

7. ACCESS

7.1. The Customer shall ensure that the Company always has unimpeded access to the work site to enable the Company to deliver the Works. The Company shall not be liable for any loss or damage to the site (including and without limitation to, damage to pathways, driveways and concreted or paved or grassed areas) except due to the negligence of the Company.

8. UNDERGROUND LOCATIONS

8.1. Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the location. The underground mains and services the Customer must identify include, but are not limited to, telephone cables, fibre optic cables, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigations pipes and oil pumping mains.

8.2. Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all any liability claims, loss, damage, cost, and fines because of damage to services not precisely located and notified pursuant to this clause.

9. TITLE AND SECURITY

9.1. Title in any Goods supplied by the Company passes to the Customer only when the Customer has made payment in full for all Works. Until all sums due to the Company have been paid in full by the Customer, the Company has a security interest in all Goods.

9.2. The Customer shall:

- (a) Sign any further document and provide any further information (which the Customer warrants to be complete, accurate and up to date in all respects) that the Company may reasonably require to register a financing statement on the personal property securities register.
- (b) Give the Company no less than 14 days written notice of any change of the Customer's name or other change in the Customer's details (including but not limited to changes in address, trading name or business practice).
- (c) Waive any rights to receive a copy of the verification statement under the PPSA and agrees that, to the extent permitted by law:
 - (i) The Customer will have no rights under (or by reference to) sections 114(1) or 133 of the PPSA.
 - (ii) The provisions of Part 9 of the PPSA which are for the benefit of the Customer or place obligations on the Company will apply only to the extent that they are mandatory.
 - (iii) Where the Company has rights under this agreement in addition to those in Part 9 of the PPSA, those rights will continue to apply.

9.3. The Customer grants to the Company, power of attorney to sign all documents required to perfect the Company's security interest in the Goods.

9.4. If the Goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with the Company until the Customer has made payment for all Goods and where those Goods are mixed with other property so as to be part of or a constituent of any new products, title to these new products shall be deemed to be assigned to the Company as security for the full satisfaction by the Customer of the full amount owing by the Customer.

9.5. The Customer gives irrevocable authority to the Company to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if the Company believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. The Company shall not be liable for any costs, damages, expenses or losses incurred by the Customer or third party as a result of this action unless such liability cannot be excluded.

9.6. The Company may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value less such sum as the Company reasonably determines on account of wear and tear.

10. CONSTRUCTION CONTRACTS ACT 2002

10.1. The Customer acknowledges that:

- (a) The Company has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a schedule amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Company by a particular date, and the Company has given written notice to the Customer of its intention to suspend its performance of the Works.
- (b) If the Company suspends the Works, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to extensions of time to complete the Works; and
 - (iv) retains its rights under this agreement including the right to terminate the agreement, and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) If the Company exercises the right to suspend the Works, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Company; or
 - (ii) entitle the Customer to exercise any rights that may otherwise have been available to the Customer as a direct consequence of the Company suspending the Works.

11. CUSTOMER INFORMATION

11.1. The Customer authorises the Company to obtain such information as it may require from any source to determine the Customer's credit worthiness and to determine credit limits.

11.2. The Company may alter the credit limit that it has given to the Customer from time to time on written notice.

12. CONSUMER GUARANTEES ACT

12.1. Where the Company supplies the Goods to the Customer for the Customer's use in a business for the purpose of the business, the Customer agrees that the Consumer Guarantees Act does not apply.

13. WARRANTIES

13.1. The Company warrants that:

- (a) The Works will conform to the Statement of Work; and
- (b) The Goods will be free from material defects at the time of installation and for the Warranty Period.

13.2. The Company will repair or make good any defects in its Workmanship arising within one year following completion of the Workmanship for which the defect is claimed ("Workmanship Guarantee"). The Workmanship Guarantee is subject to the following conditions:

- (a) The Company is not liable to carry out any remedial work under the Workmanship Guarantee unless we receive written notice from the Customer of the claim within seven days after discovery of the defect.
- (b) The Workmanship Guarantee does not apply to the Goods (for which the Customer acknowledges clause 13.1(b) applies).
- (c) The Company's liability in respect of all claims arising from the Workmanship Guarantee will be limited to the labour value of the Workmanship.
- (d) The Workmanship Guarantee does not cover any occurrence which would normally be covered by the Customer's public liability insurance or any other form of insurance.
- (e) The Workmanship Guarantee does not apply where alterations or repairs are made by the Customer or any third party to the Works without the knowledge and prior written consent of the Company (and without the Company first having the opportunity to remedy the same to its satisfaction).
- (f) The benefit of the Workmanship Guarantee is not assignable by the Customer to any other person.
- (g) The Workmanship Guarantee does not apply until the Works have been completed in full and the Customer has made all payments owing to the Company.

13.3. The Customer acknowledges that:

- (a) no representations or warranties about the subject matter of this agreement have been made by, or on behalf of, the Company; and
- (b) the Customer has not relied on any representations or warranties about the subject matter of this agreement, except as expressly provided in this agreement.

13.4. The Company will not be liable to the Customer for any indirect, special, incidental, or consequential loss or damage, however caused.

13.5. The maximum liability of the Company in relation to the supply of the Works will not exceed the amount paid by the Customer for such Works.

14. SERVICES INTERRUPTION

14.1. Without prejudice to any other right or remedy of the Company, the parties acknowledge that from time to time a Services Interruption Event may occur and, in that case, such occurrence will delay the Works and will entitle the Company to immediately cease the performance of all or any part of the Works until the Services Interruption Event ends or is remedied (as the case may be).

14.2. The Customer acknowledges that the Company may charge for any costs of recommencing the Works after the occurrence of a Services Interruption Event.

15. DISPUTED ACCOUNTS

15.1. The Customer must notify the Company in writing within five days of receipt of any disputed invoice. The notification must quote the relevant invoice number and must include all the necessary details of the reason the invoice is being disputed.

15.2. Should the Customer fail to notify the Company of any dispute within five days of receipt of the invoice, the Customer shall be deemed to have accepted the invoice and shall pay that invoice on or before the due date.

16. CONFIDENTIAL INFORMATION

16.1. You agree to keep the Confidential Material confidential and not use the Confidential Material for any purpose other than for the purpose for which it was supplied, or copy or reproduce any of the Confidential Material in any way except if disclosure is necessary to enable the Works to be used or where we have consented to disclosure.

16.2. On request by us, you will ensure that any Confidential Material (including any copies) that you possess or control is returned to us.

17. RESOLVING DISPUTES

17.1. The Company and the Customer will use all reasonable endeavours to resolve any dispute between them. If they cannot resolve their dispute by negotiation within a reasonable time, the parties will refer the dispute to mediation which will be conducted in accordance with the Resolution Institute New Zealand Standard Mediation Agreement.

17.2. Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate Court.

18. INTELLECTUAL PROPERTY

18.1. The Customer acknowledges that the Company is the sole owner of all intellectual property (including business know how, ideas, methodologies, routines, systems and processes relating to or arising, directly or indirectly, out of the Works or developed or contributed to by the Company in relation to any information, fault, repair or documentation that is supplied to the Customer or as a result of the Company performing the Works.

18.2. The Customer agrees not to use the Company's trademarks or other intellectual property rights except as authorised by the Company.

19. GENERAL

19.1. This agreement together with all Statements of Work, supersedes all previous agreements, understandings, negotiations, representations, and warranties about its subject matter, and embodies the entire agreement between the Company and the Customer about its subject matter.

19.2. The Company may review any of these terms at any time. Any change will take effect on the next transaction following the date on which the Company notifies the Customer of such change.

19.3. The Company may assign to any other person all or any part of the debt owing by the Customer to the Company.

19.4. If any provision of this agreement is unenforceable, that term will be deemed modified to the extent necessary to make it enforceable or if modification is impractical, the provision will be deemed deleted without affecting the remainder of these terms.

19.5. This agreement may only be varied by the written agreement of the Company and the Customer.

19.6. Any notice required to be served by either party shall be deemed to have been properly served if left at or posted in a pre-paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been affected when the letter containing such notice is delivered in the ordinary course of post.

19.7. These terms shall be governed by and construed in accordance with the laws of New Zealand.

20. ACKNOWLEDGEMENT AND DECLARATION

By signing these terms, as the Customer, we:

20.1. Accept and agree to abide by the terms of trade specified above;

20.2. Give the necessary approvals, consents, and authorisations under the Privacy Act 2020;

20.3. Agree that these terms of trade will apply to all contracts between the Company and the Customer; and

20.4. Consent to the Company collecting, using, and disclosing personal information for the following purposes:

- (a) Verifying any information that we give to you (or information that you may collect from other sources) with third parties and third-party databases, including Government agencies (NZ Transport Authority, Motor Vehicle Register, PPSR, for example).
- (b) Carrying out credit checks on us with a credit reporting agency for a purpose of making a credit decision affecting us (including debt collection) or for the requirements of the Anti-Money Laundering and Countering Financing Terrorism Act 2009. This will require you to give our information to the credit reporting agency as well as the credit reporting agency providing information about us to you. (You may also disclose our positive credit information (including repayment history information) to a credit reporting agency). "Debt collection" includes appointing an agent to collect outstanding debts and listing defaults with a credit reporting agency.
- (c) Checking the Ministry of Justice fines database for any overdue fines we may have. This will require you to give our information to the Ministry of Justice. This check may be carried out by a credit reporting agency, which will require the search results to be disclosed to the credit reporting agency.
- (d) Verifying any information that we give to you (or information that you may collect from other sources) with third parties and third-party databases for the purposes of fraud prevention or the Anti-Money Laundering and Countering Financing Terrorism Act 2009.
- (e) Where we have voluntarily given you driver licence information, this information may also be disclosed to a credit reporting agency and the Ministry of Justice as part of the checks you undertake with them.
- (f) We authorise any third party to provide our personal information to you for any of these purposes.
- (g) We understand that if you disclose our personal information to a credit reporting agency, they may hold our information on their credit reporting database and use it for providing credit reporting services and for any other lawful purpose and they may disclose my information to their subscribers for the purpose of credit checking or debt collection or for any other lawful purpose.