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# McCarthy Contracting Ltd – Terms & Conditions of Trade

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These Terms and Conditions and any additional terms on any delivery note, receipt, invoice or other document prepared by McCarthy Contracting Limited in relation to any sale or provision of services apply to the sale or provision of services, whether such sale or agreement to provide services is completed by written agreement, electronic record or oral communication unless McCarthy Contracting Limited otherwise agrees.

## 1. Definitions

- 1.1 “McCarthy Contracting” shall mean McCarthy Contracting Ltd its successors and assigns or any person acting on behalf of and with the authority of McCarthy Contracting Ltd.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer.
- 1.3 “Goods and Services” shall mean all goods and services supplied by McCarthy Contracting to the Customer (and includes any advice or recommendations) as described on the invoices, quotation, work authorisation or any other forms as provided by McCarthy Contracting to the Customer.
- 1.4 “Price” shall mean the price payable for the Goods and Services as agreed between McCarthy Contracting and the Customer in accordance with clause 3 of this contract.

## 2. Acceptance

- 2.1 Any instructions received by McCarthy Contracting from the Customer for the supply of Goods and Services and/or the Customer’s acceptance of Goods and Services supplied by McCarthy Contracting shall be deemed to be acceptance of these Terms and Conditions.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of McCarthy Contracting.
- 2.4 The Customer shall give McCarthy Contracting not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including, but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by McCarthy Contracting as a result of the Customer’s failure to comply with this clause.

## 3. Price and Payment

- 3.1 At McCarthy Contracting’s sole discretion the Price shall be either:
- (a) McCarthy Contracting’s current price at the date of delivery of the Goods and Services according to McCarthy Contracting’s current price list; or
- (b) as indicated on the invoice provided by McCarthy Contracting to the Customer in respect of the Goods and Services
- (c) McCarthy Contracting’s quoted Price which shall be binding upon McCarthy Contracting provided that the Customer shall accept McCarthy Contracting’s quotation in writing within thirty (30) days and the quotation may be withdrawn by McCarthy Contracting at any time before acceptance by the Customer.
- 3.2 At McCarthy Contracting’s sole discretion a deposit may be required.
- 3.3 At McCarthy Contracting’s sole discretion:
- (a) payment shall be due on delivery of the services; or
- (b) payment shall be due before delivery of the Goods and Services.
- 3.4 Time for payment for the Goods and Services shall be of the essence and may be stated on the invoice or any other forms.
- 3.5 If McCarthy Contracting does not require payment on or before delivery of the Goods and Services, payment will be due on the date stated by McCarthy Contracting. If no time is stated then payment shall be due twenty (20) days following the end of the month in which an invoice is handed to the Customer or posted to the Customer’s address or direct for notices.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and McCarthy Contracting.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Liability

- 4.1 The Customer acknowledges that some Goods and Services offered by McCarthy Contracting are of a hazardous nature and may result in damage or loss to property and/or serious or fatal injury to any person/s and/or animals. The Customer agrees to indemnify McCarthy Contracting against all liability for any injury, damage or loss of any property, injury or death of any person/s and from any claim made by the Customer and/or the Customer’s family, estate, heirs or assigns that may arise from the supply of Goods and Services.
- 4.2 McCarthy Contracting shall be under no liability for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach of these Terms and Conditions or any related document by McCarthy Contracting.
- 4.3 McCarthy Contracting’s liability to the Customer shall in all circumstances be limited to damages and will not exceed the Price of the Goods and Services supplied by McCarthy Contracting in relation to the transaction from which such liability arises.

## 5. Consumer Guarantees Act 1993

- 5.1 If the Customer is acquiring Goods and Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods and Services by McCarthy Contracting to the Customer.

## 6. Default & Consequences Of Default

- 6.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twenty percent (20%) per annum (and at McCarthy Contracting’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- 6.2 In the event that the Customer’s payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by McCarthy Contracting.
- 6.3 The Customer shall pay McCarthy Contracting on demand all costs (including legal costs on a solicitor/client basis) incurred by McCarthy Contracting in connection with any default by the Customer.
- 6.4 Without prejudice to any other remedies McCarthy Contracting may have, if at any time the Customer is in breach of any obligation (including those relating to payment) McCarthy Contracting may suspend or terminate the supply of Goods and Services to the Customer and any of its obligations under the Terms and Conditions. McCarthy Contracting will not be liable to the Customer for any loss or damage the Customer suffers because McCarthy Contracting has exercised its rights under this clause.
- 6.5 Without Prejudice to McCarthy Contracting’s other remedies at law McCarthy Contracting shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to McCarthy Contracting shall whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to McCarthy Contracting becomes overdue, or in McCarthy Contracting’s opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an agreement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 7. Risk and Ownership

- 7.1 Goods will be at the Customer’s risk immediately on delivery. The Customer will insure Goods at full replacement value until the legal and beneficial ownership of them has passed to the Customer.
- 7.2 Legal and beneficial ownership of Goods will remain with McCarthy Contracting until payment in full is made for the Goods and Services and for all other amounts owing by the Customer to McCarthy Contracting.
- 7.3 Until legal and beneficial ownership of Goods has passed to the Customer, the Customer will store the Goods separately from other Goods.
- 7.4 Without prejudice to any of McCarthy Contracting’s other remedies, if any amount payable by the Customer to McCarthy Contracting is overdue or the Customer becomes insolvent, commits an act of bankruptcy, has a receiver appointed over all or any part of the assets of the Customer, makes or is likely to make an arrangement with creditors or has a liquidator appointed, then
- (a) McCarthy Contracting may cancel any outstanding order with the Customer; and
- (b) any moneys payable by the Customer to McCarthy Contracting whether due for payment or not shall become immediately due and payable; and
- (c) McCarthy Contracting reserves the right, and the Customer irrevocably consents to McCarthy Contracting entering (whether forcibly or otherwise) by its employees or duly authorised agents, onto the Customer’s premises, or onto any premises where Goods owned by McCarthy Contracting are reasonably thought to be stored and repossess and subsequently resell the Goods.
- 7.5 As security for all obligations the Customer may owe McCarthy Contracting from time to time the Customer grants McCarthy Contracting a security interest under the Personal Property Securities Act (the “PPSA”) in all goods supplied by McCarthy Contracting to the Customer.
- 7.6 The Customer will provide McCarthy Contracting on request with all information necessary for the registration of McCarthy Contracting’s security interest on the Personal Property Securities Register.
- 7.6 The Customer waives its right in terms of section 148 of the PPSA to receive a copy of a verification statement for all other amounts owing by the Customer to McCarthy Contracting.

## 8. Privacy Act 1993

- 8.1 The Customer Client authorises McCarthy Contracting to:
- (a) Collect, retain and use any information about the Customer for the purpose of assessing the Customer’s creditworthiness or marketing products and services to the Customer.
- (b) Disclose information about the Customer, whether collected by McCarthy Contracting from the Customer directly or obtained by McCarthy Contracting from any other source, 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.
- 8.2 Where the Customer is an individual the authorities under clause 8.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 8.3 The Customer shall have the right to request from McCarthy Contracting a copy of the information about the Customer retained by McCarthy Contracting and the right to request McCarthy Contracting to correct any incorrect information about the Customer held by McCarthy Contracting.

## 9. General

- 9.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 9.2 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 New Zealand.
- 9.3 McCarthy Contracting shall be deemed not to have waived any right to do anything unless that waiver is in writing and signed by an authorised manager of McCarthy Contracting.
- 9.4 If any part of these Terms and Conditions is illegal, unenforceable or invalid, the remaining Terms and Conditions are not affected.
- 9.5 McCarthy Contracting may in its absolute discretion vary these Terms and Conditions at any time by publication on our website [www.mccarthycontracting.co.nz](http://www.mccarthycontracting.co.nz). The change will take effect from the time specified.
- 9.6 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 McCarthy Contracting.
- 9.7 McCarthy Contracting reserves the right to correct any typographical or clerical errors in any Prices quoted.
- 9.8 If there is any inconsistency between these Terms and Conditions and any other communication by McCarthy Contracting to the Customer, these Terms and Conditions will prevail unless McCarthy Contracting specifies or agrees otherwise.
- 9.9 McCarthy Contracting may assign, licence or sub-contract all or any part of its rights and obligations without the Customer’s consent.
- 9.10 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.
- 9.11 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, earthquake, drought, storm or other event beyond the reasonable control of either party.