

**Where not covered by an industry standard Conditions of Contract agreement, we have developed a comprehensive Terms of Trade which clearly outlines each parties rights and responsibilities to assist in the in the smooth running of your project.**

## **TERMS AND CONDITIONS OF TRADE**

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The following terms and conditions are applicable to the provision of building and construction services and building materials (“the Building Work”) by Alder Homes Limited (“Alder Homes”). No other terms, conditions or deviations from these terms and conditions shall be binding unless accepted in writing by an authorised representative of Contract. In the event of a conflict between these terms and conditions and any accompanying documentation, the terms and conditions of the accompanying documentation shall prevail.

### **1. Plans and Specifications**

Copyright and ownership in all drawings, specifications and other technical information provided by Alder Homes in connection with the contract is vested in Alder Homes Limited. Where Alder Homes has followed plans and specifications provided by the Customer or their agent, the Customer shall indemnify Alder Homes against all damages, penalties, costs and expenses in respect of which Alder Homes may become liable through the utilisation of those plans and specifications.

### **2. Quotation and Acceptance**

Alder Homes shall produce a formal quotation for the Customer for the Building Work. The quotation shall be subject to the clarifications and exclusions set out in the documentation accompanying these terms and conditions and shall be valid for a period of thirty (30) days from the date specified on the quotation.

The Customer shall accept the quotation by signing the acceptance form accompanying the quotation. The acceptance of the quotation in the manner specified in this clause shall constitute a binding contract and acceptance of the terms and conditions contained herein.

For smaller Projects, the customer shall accept the quotation by agreeing to go ahead with the work described, and/or by booking a start date, and/or paying deposit.

### **3. Variations**

Except as expressly provided in these terms and conditions, no variation or alteration to the scope of the Building Work shall be binding on the parties unless recorded in writing and signed by both parties, including any adjustment to the contract price.

Any changes required as a result of any ambiguous drawings or any other documentation provided by the Customer or their agent will be treated as a variation to the Building Work.

### **4. Cancellation**

In the event that the Customer wishes to cancel the contract for the Building Work at any time after acceptance of the quotation, the Customer shall pay all actual and reasonable costs and expenses incurred by Alder Homes together with a reasonable administration fee, provided that the Customer shall not be entitled to cancel the contract once the Building Work has commenced without the prior consent in writing of Alder Homes.

Alder Homes shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods or services to the Customer if the Customer fails to pay any money owing after the due date, or if the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 2006, or if liquidation proceedings are commenced in relation to the Customer, or if the Customer shall otherwise become bankrupt or insolvent, or if any other event occurs which evidences a lack of credit worthiness or insolvency on the part of the Customer. Any cancellation or suspension by Alder Homes pursuant to this clause shall not affect Alder Homes's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to Alder Homes under these terms and conditions.

### **5. Price**

The price of the Building Work shall be the price stated in the quotation together with all extras selected by the Customer and subject to variation in accordance with clause 3. The price quoted for the Building Work excludes GST unless stated otherwise. GST shall be payable by the Customer in addition to the price quoted.

Where no price is stated in writing or agreed, the goods and/or services shall be deemed to be sold and/or supplied at the current price applying at the date upon which the invoice for the goods or services is issued to the Customer.

Notwithstanding anything contained in this clause or the quotation, the price of the goods and/or services may be increased by the amount of any reasonable increase in cost of supply of the goods or services between the date upon which the quotation is delivered to the Customer and the date upon which the goods or services are supplied and where such increase is beyond the reasonable control of Contract.

## **6. Payment**

Payment for the Building Work shall be made in full, on or before [SELECT OPTION]

the [ ] day of the month following the month in which the invoice is issued

the [ ] day of the month following the month in which the good or services are delivered

Otherwise, payment shall be made in full within seven (7) days of the date of the invoice.

All invoices for progress payments will be prepared to meet the provisions of the Construction Contracts Act 2002. All invoices issued pursuant to the contract shall be in the form of a payment claim within the meaning of the Construction Contracts Act 2002. The Customer is hereby put on notice of the requirements of the Construction Contracts Act 2002 in terms of the issuing of payment schedules.

Alder Homes reserves the right to charge interest on all overdue accounts at the daily rate of 1.75 times Alder Homes's bank total overdraft interest rate from the due date for payment until the date when payment is actually made and all expenses and costs (including legal costs as between solicitor and client and debt collection fees) incurred by Alder Homes in obtaining or attempting to obtain a remedy for the failure to pay.

The Customer may not deduct or withhold any amount (whether by way of a set-off, counterclaim or otherwise) from any money owing to Alder Homes.

Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

The Customer expressly acknowledges that no retentions shall apply unless provision for a retention is incorporated within the prevailing Conditions of Alder Homes.

## **7. Commencement and Completion**

The Customer acknowledges that any estimates as to the time frames for the commencement and completion of the Building Work are approximate only. Alder Homes will use all reasonable endeavours to ensure the

Building Work is commenced and completed within the time frame specified but shall not be liable for any delay or failure to do so. Alder Homes shall not be responsible for any delays caused by separate or nominated subcontractors. Should any delays occur the Customer agrees that all costs incurred by Alder Homes and resulting from such delays will be charged as a variation to the contract price.

## **8. Repair of Defects**

Where the Building Work undertaken is of a commercial nature Alder Homes shall at its sole cost rectify any defects in the materials or workmanship which are notified to Alder Homes within ninety (90) days of completion of the Building Work and within a reasonable time of receiving written notification of those defects. Alder Homes shall not be liable under this clause to remedy:

- defects covered by a manufacturer's or supplier's guarantee that is available to and may be enforced by the Customer;
- defects in or damage caused by work undertaken by the Customer or the any of the Customer's contractors.

Where the Building Work is of a residential nature any notification by the Customer in writing to Alder Homes within twelve (12) months from the completion of the Building Work shall be rectified by Alder Homes at Alder Homes's costs within a reasonable time of notification by the Customer of the defect. Alder Homes shall not be liable under this clause to remedy:

- defects covered by a manufacturer's or supplier's guarantee that is available to and may be enforced by the Customer;
- defects in or damage caused by work undertaken by the Customer or the any of the Customer's contractors.

## **9. Risk and Insurance**

Any goods supplied by Alder Homes shall be at the sole risk of Alder Homes until the earlier of payment for the goods and delivery of the goods to the Customer.

If the Building Work involves an extension or alteration to existing premises, the Customer shall be solely responsible for arranging an extension of the Customer's insurance policy to provide insurance cover for all associated risks.

## **10. Ownership**

Ownership of any goods and/or materials supplied as part of the Building Work shall not pass to the Customer until all amounts owing by the Customer to Alder Homes in respect of the goods and/or materials have been paid in full.

The Customer acknowledges and agrees that by assenting to these terms & conditions, the Customer grants a Purchase Money Security Interest to Alder Homes, as that term is defined in the Personal Property Securities Act 1999 ("PPSA"), in all goods and/or materials supplied by Alder Homes to the Customer.

The Customer irrevocably undertakes to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which Alder Homes may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register. The costs of registering a financing statement or a financing change statement shall be met by the Customer and may, where applicable, be debited against the Customer's credit account with Alder Homes. The Customer shall not agree to allow any person to register a financing statement over any of the goods supplied by Alder Homes without the prior written consent of Alder Homes and will immediately notify Alder Homes in writing if the Customer becomes aware of any person taking steps to register a financing statement in relation to such goods.

The Customer:

- a) waives its rights to:
  - i) receive a copy of any verification statement;
  - ii) receive a copy of any financing change statement:
- b) If the Goods are for the Customer's business use, the Customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 of the PPSA.

The Customer irrevocably grants to Alder Homes the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Alder Homes has cause to exercise any of Alder Homes's rights under section 109 of the PPSA, and the Customer shall indemnify Alder Homes from any claims made by any third party as a result of such exercise.

Alder Homes and the Customer agree that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA will apply to these terms and conditions, or the security interest under these terms and conditions.

The Customer will be responsible to Alder Homes for any costs or damages incurred in reclaiming and disposing of the unpaid goods and/or materials. Such costs include but are not limited to loss in value, cost or repossession, damaged premises and recovery, storage, resale and legal

costs, on a solicitor and client basis. These costs shall be recoverable as a debt due to Alder Homes by the Customer.

## **11. Warranty and Liability**

The warranties, descriptions, representations, or conditions whether implied by law, trade, custom or otherwise are, and all other liability of Alder Homes, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law.

Insofar as Alder Homes may be liable, notwithstanding anything contained in these terms and conditions, to the extent permitted by law the total liability of the Alder Homes whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly out of completion of the Building Work or any other breach of Alder Homes's obligations is limited to the lesser of:

- a) to the price of goods and/or materials complained of;
- b) the cost of completing any necessary repairs/remedial work; or
- c) the actual loss or damage suffered by the Customer.

Except where statute expressly requires otherwise Alder Homes is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

## **12. Collection and Use of Information**

The Customer authorises Alder Homes to collect, retain and use any information about the Customer for the purpose of assessing the Customer's creditworthiness and/or enforcing any rights under this contract.

The Customer authorises Alder Homes to disclose any information obtained to any person for the purposes set out in this clause. Where the Customer is a natural person, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.

## **13. Miscellaneous**

Alder Homes shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

Failure by Alder Homes to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Alder Homes has under this contract.

If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or implied.

The Customer may not assign any of its rights or obligations under this contract without the prior written consent of Alder Homes.

#### **14. Personal Guarantee**

In consideration for Alder Homes agreeing to complete the Building Work at the request of the Customer, where the Customer is a company or trust, the directors or trustees signing this contract also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Alder Homes the payment of any and all moneys owed by the Customer to Alder Homes and indemnify Alder Homes against non-payment by the Customer.

#### **15. Governing Law**

The within terms and conditions shall be governed by and construed in accordance with the laws of New Zealand and the parties shall submit to the exclusive jurisdiction of the New Zealand Courts.

#### **16. Agency**

The Customer authorises Alder Homes to contract either as principal or agent for the provision of goods or services.

Where Alder Homes enters into a contract of the type referred to this clause the Customer agrees to pay any amounts due under that contract.

Any list of proposed subcontractors supplied by Alder Homes is provided on a without prejudice basis and Alder Homes reserves the exclusive right to change subcontractors without adjustment to the quotation.

#### **17. Dispute Resolution**

In the event of a dispute or disagreement arising between Alder Homes and the Customer the party with a grievance may give written notice to the other party specifying the nature of the dispute or disagreement, the remedy sought and requiring that the dispute or disagreement be determined and settled in accordance with this clause.

On receipt of the notice, the parties shall each appoint a representative who has authority to determine the grievance or dispute, and those two representatives shall meet as soon as reasonably possible to see if they can determine the grievance. All discussions, meetings and correspondence between the two representatives shall be deemed without prejudice and without concession of liability and shall not be used by either party in any later proceedings unless:

- a) Both parties agree, or
- b) the two representatives reach agreement, but one party fails to honour such agreement.

If the two representatives cannot within fourteen (14) days of being appointed reach agreement on how the grievance or dispute is to be determined, the parties shall refer the dispute to an independent expert who is acceptable to both parties. If the parties cannot or do not agree on an independent expert within three (3) days of the first suggestion of a suitable person, either party may ask the President of the New Zealand Registered Master Builders Federation to nominate a person to act as an independent expert and the first person so nominated who is able and willing to be appointed shall be deemed the independent expert for the purposes of this clause. The independent expert shall:

- a) Set his or her own rules and procedure for the resolution of the grievance or disagreement
- b) At all times act in good faith and in an unbiased way
- c) Promptly hear and determine the dispute
- d) Provide a written decision (with reasons for that decision) if requested by either party.

The independent expert's:

- a) Decision shall be binding on both parties:
- b) Costs shall be paid equally by the parties unless the independent expert decides otherwise in his or her decision.

Notwithstanding anything contained in clause 17, disputes in excess of ten thousand dollars (\$10,000.00) shall be referred at Alder Homes's sole discretion to arbitration under the Arbitration Act 1996 or any subsequent Act passed in its place.

## **18. Mortgage [SELECT OPTION]**

The Customer agrees that should any goods or materials ("Goods") supplied by Alder Homes be affixed or installed in a property such as to render them a fixture of that property, the Customer agrees that in consideration of Alder Homes allowing the goods to be so affixed or installed, the Customer shall upon written demand being made by Alder Homes at any time but before payment in full is made to Alder Homes, execute a Memorandum of Mortgage ("Mortgage") over the property in which the goods have become a fixture in favour of Alder Homes (to be prepared by Alder Homes's solicitors at the Customer's cost), for the amount equivalent to the unpaid balance owing plus any interest and costs owing thereon until paid in full. The terms of such mortgage shall be collateral to the terms hereof and payment in full of the amounts owing to Alder Homes hereunder shall operate as a full discharge of the mortgage. Alder Homes agrees not to make demand on the Customer to execute such a mortgage unless any of the following occur:

- a) Failures to make payment on the due date;

- b) Any composition with creditors, act of bankruptcy, winding up or receivership of the Customer.

The Mortgage referred to in this clause 18 hereof shall be the ADLS form approved by the Registrar General of Land 2007/4237, and the covenants of the said form whether executed by the Customer or not shall be deemed to be included. The Customer hereby authorises Alder Homes to lodge and maintain a Caveat against the title to the property in which the goods have been affixed or installed for the protection of the agreement to mortgage described above should Alder Homes in its absolute discretion consider it necessary to lodge such a Caveat. The Customer hereby grants to Alder Homes an irrevocable power of attorney in relation to the property in which the goods have been affixed or installed to enable Alder Homes to execute the mortgage referred to in this clause 18 hereof should the mortgage not be executed by the Customer for any reason whatsoever PROVIDED THAT Alder Homes will not execute a mortgage as attorney for the Customer unless Alder Homes has requested in writing that the Customer execute the mortgage pursuant to the terms of this agreement and the Customer has failed to execute such a mortgage within five (5) working days of such request.