

S&S BUILDERS LTD: TERMS OF TRADE 2017

1. Ownership

Ownership and title to all goods remains with S&S Builders Ltd ("S&S Builders Ltd") and does not pass to the Customer until payment is made in full.

2. Acceptance

2.1. Acceptance of services and/or delivery of any goods will be deemed to be acceptance by the Customer of these Terms and Conditions of Trade, notwithstanding anything that may be stated to the contrary in the Customer's enquiries or on the Customer's orders.

2.2. These Terms and Conditions of Trade (together with any Quote and/or Application for Credit Account and Guarantee where applicable) form the entire agreement between S&S Builders Ltd and the Customer and supersede all representations, agreements or other communications made by S&S Builders Ltd.

3. Prices

At S&S Builders Ltd's sole discretion the 'Price' for the Goods and Services shall be either:

3.1. The Price applicable at the date of invoice; or

3.2. S&S Builders Ltd's quoted Price, which shall be binding on S&S Builders Ltd provided that the Customer accepts S&S Builders Ltd's quotation within 30 days.

3.3. Any variation to the plan of scheduled works will be charged either:

(a) At the rates applicable at the date of invoice; or

(b) Where a quotation has been accepted, the variation and cost of that variation will be agreed in writing and the cost shown as 'extras' on the invoice.

3.4 The Customer must pay the Price charged.

3.2 Prices unless otherwise stated are exclusive of Goods and Services Tax and other taxes which must be paid by the Customer.

4. Payment

4.1. S&S Builders Ltd will invoice the Customer for all sales.

4.2. All accounts are payable in accordance with the date specified on the invoice ("due date"). The due date shall not be less than 7 days from the date of invoice.

4.3. If payment is not made by the Customer on the due date, S&S Builders Ltd may suspend or terminate supply.

4.4. In the event that payment is not received by the due date default interest of 2.0% per month will accrue on the overdue balance. Such interest will be payable on demand.

4.5. Payment of all amounts is to be paid in full without any set-off, reduction or counterclaim.

5. Delivery

5.1. Delivery occurs at the time possession of the goods passes to the Customer or person nominated by the Customer.

5.2. Goods are at the sole risk of the Customer upon delivery in accordance with clause 5.1. even though ownership of the goods may not have passed to the Customer.

6. Limitation of Liability

6.1. S&S Builders Ltd shall in no way be liable to the Customer whether in contract, tort or otherwise for any loss or consequential damages due to:

(a) Delay or failure to supply goods.

(b) Suspension or termination of supply of goods or services pursuant to clause 4.3.

(c) Damage caused by misuse of goods.

6.2. If the Customer is a "Consumer" who acquires the goods from S&S Builders Ltd for the purposes of a business, the Customer agrees that the warranties contained in the Consumer Guarantees Act 1993 will not apply and these Terms and Conditions of Trade will apply instead.

6.3. The conditions, warranties and guarantees contained in the Sale of Goods Act 1908, to the extent permitted, are hereby excluded.

6.4. S&S Builders Ltd's liability whether by act or omission or negligence is limited to the amount (excluding GST) invoiced to the Customer for the goods and services and S&S Builders Ltd shall have no liability for any consequential, indirect or special loss, damage or injury suffered by the Customer.

7. Personal Property Securities Act 1999 ("PPSA")

7.1. All terms in this clause 7 of these Terms and Conditions of Trade have the meaning given in the PPSA and section references shall be to sections of the PPSA.

7.2 Clause 1 creates a security interest in all goods supplied by S&S Builders Ltd.

7.3. The Customer consents to S&S Builders Ltd registering on the Personal Property Security Register ("the PPSR") a general security interest over all the Customer's assets and a security interest over all the goods supplied by S&S Builders Ltd.

7.4. The Customer waives the right to receive a copy of the Verification Statement.

7.5 Nothing in Sections 114(1) (a), 133 and 134 of the PPSA will apply to these Terms and Conditions of Trade.

7.6. The Customer waives its rights under Sections 116, 120(2), 121, 125, 131 and 148

8. Default

8.1. Notwithstanding any other agreement as to the terms of payment contained within these Terms and Conditions of Trade, the total purchase price shall immediately become due and payable and S&S Builders Ltd shall have the right to forthwith cancel this contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:

(a) The Customer fails to pay any money owing on the due date.

(b) The Customer, parts with possession, leases or disposes of any goods or does anything inconsistent with S&S Builders Ltd's ownership of the goods prior to making full payment.

(c) S&S Builders Ltd believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver appointed, or is declared insolvent.

(d) The goods are at risk, as that term is defined in the PPSA.

(e) Breach by the Customer of any other terms contained in these Terms and Conditions of Trade.

8.2. Upon the happening of any of the above events the security interest created by clause 1 and clause 7.2. of these Terms and Conditions of Trade become enforceable. In addition to the rights conferred by part 9 of the PPSA, S&S Builders Ltd may take possession of any goods and may enter any premises, whether or not the occupier is present in order to take possession of goods pursuant to this clause.

9. Costs

The Customer must pay S&S Builders Ltd's costs (including debt collection and legal costs (as between solicitor and client) on a full indemnity basis) of and incidental to the enforcement or attempted enforcement of S&S Builders Ltd's rights, remedies and powers under these terms.

10. The Privacy Act 1993

10.1. The Customer authorises S&S Builders Ltd to:

(a) Make enquiries with relevant third parties and/or credit agencies regarding the Customer's credit history.

(b) Release information for the above purpose to the extent necessary to relevant third parties and/or credit agencies.

(c) Instruct an agent to carry out any credit enquiries and the Customer agrees the above authorisations will apply to such agent.

10.2 The Customer authorises any credit agencies and/or third parties to disclose any relevant information to S&S Builders Ltd in response to credit enquiries. The Customer also acknowledges that any information disclosed to a credit agency will be held on their systems and used to provide their credit reporting service.

11. Copyright

11.1. Copyright in all drawings, specifications and other technical information provided by S&S Builders Ltd remains vested in S&S Builders Ltd.

11.2. Any advice given by S&S Builders Ltd shall remain the exclusive property of S&S Builders Ltd and may not be copied, reproduced, transmitted or communicated to a third party without S&S Builders Ltd's written consent which may be withheld at S&S Builders Ltd's sole discretion.

11.3. Copyright on all documents as detailed in clause 11.1. remains the sole property of S&S Builders Ltd and may only be used for the specific purpose for which they were supplied.

12. General

12.1. These Terms and Conditions of Trade may be varied by S&S Builders Ltd at any time. New terms and conditions of trade will be enforceable by S&S Builders Ltd from the date they are provided to the Customer.

12.2. The Customer's continuing instructions will be deemed to constitute acceptance of the new terms and conditions of trade.

12.3. If any part of these Terms and Conditions of Trade is deemed to be illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms and Conditions of Trade shall remain in full force and effect.

12.4 The Customer and S&S Builders Ltd acknowledge that for all purposes for any court action arising from this contract, the proper registry of the court for the filing of and hearing of any claim is at Dunedin in New Zealand and for all purposes the material part of this contract is deemed to arise at the principle place of business of S&S Builders Ltd.

12.5. Should the customer enter into discussion with subcontractors which form part of S&S Builders Ltd invoices, and enter into payment discussion, all work will cease with the customer and full payment (plus S&S Builders margin of 20%) is to be paid immediately. S&S Builders Ltd does not tolerate customers contracting subcontractors requesting copies of invoices etc. These are only obtained through S&S Builders Ltd at their discretion.

12.6 Failure to pay for work carried out by S&S Builders and/or their subcontractors may result in removal of goods from the building.