



## Mike Barker Contractors Limited

### CONDITIONS OF CONTRACT

These Conditions of Contract ("Conditions") apply in respect of each supply of goods and services by Mike Barker Contractors Limited ("the Company") to you, both now and in the future except to the extent that the Company otherwise agrees with you in writing.

#### Price

1. Any estimate provided by the Company is merely an indication of the final price. If the Company provides a quote specifying a fixed price the Company will charge that price subject to any changes to the agreed services or the cost of materials and any delays which are out of Company's control.
2. Goods or services that fall outside of those agreed will be charged separately.
3. Unless otherwise specified the Company will charge separately for-
  - time spent searching records to ascertain the location of buried services;
  - repair and/or reinstatement work required in respect of any buried service not drawn to the Company's attention prior to the provision of the estimate or quote;
  - reinstatement of grounds or surfaces including (but not limited to) lawns, driveways, footpaths, kerbing and channels;
  - standing time at your request or that of any other contractor; and
  - excavation and removal, or replacement and backfilling, of any unsuitable foundation material.
4. All goods and services are subject to GST.
5. Work will only proceed following your acceptance of any estimate or quote provided.
6. The Company may require a deposit before commencing works.

#### Invoices & Payment

7. The Company may invoice on an interim basis, on completion of the works, on termination of the contract or when a significant expense is incurred.
8. Invoices are payable by the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
9. If an invoice is not paid in full on the due date the Company reserves the right to –
  - charge interest at the rate of 2% above the rate charged by the Company's trading bank for an overdraft facility as at the close of business on the due date; and
  - charge collection and legal fees and any other costs incurred to recover the overdue amount.
10. If you are an incorporated entity or trust, your directors, officers or trustees jointly and severally guarantee and undertake to the Company the payment of any amounts payable by you.
11. If the contract with the Company is cancelled for whatever reason (save for the default of the Company) you must pay for all work undertaken and all expenses incurred to the date of cancellation which amount shall become payable immediately.
12. The Company can decline to commence works or otherwise cancel the contract if you breach these Conditions or any other specified condition.

#### Consents, hazards etc

13. It is your responsibility to obtain all necessary or desirable consents and permits to undertake the work and to locate and disclose to the Company prior to work commencing all on-site hazards and potential risks and the location of any relevant boundaries and existing services.

**Our Liability**

- 14. The Company guarantees all workmanship, equipment and materials provided for a period of 90 days from the date of completion of the work.
- 15. The Company shall not be liable for any delay or failure to perform an obligation under these Conditions in whole or in part or for any loss or damage if such delay or failure is due to circumstances or events beyond the reasonably control of the Company including (but not limited to) any acts of God, weather conditions, labour disputes or industrial actions.
- 16. The Company takes no responsibility for batters, cuts or fill whether existing or to be formed.

**Retention of Title**

- 17. Title to any goods supplied by the Company passes to you only when you have made payment in full for those goods. You acknowledge that the Company has the right to repossess goods in the case of default and hereby authorise the Company and its agents to enter any premises occupied by you or your agents or assignees on or in which goods are situated at any reasonable time after default and to remove and repossess those goods. The Company shall not be liable for any costs, damages or expense incurred by you or any third party as a result of this action.

**Disputes**

- 18. In the event of dispute, you must pay the invoice in full and refer the matter for resolution as follows:
  - 18.1 Any dispute arising out of these Conditions or the contract must be referred to mediation or the Disputes Tribunal before the matter may be referred to arbitration or litigation and in the case of mediation, the mediator must agree by the parties or, failing agreement, nominated by the president of the New Zealand Law Society, or his or her nominee.
  - 18.2 Both parties must cooperate with the mediator or referee and use their best endeavours to resolve the issue. The costs of shall be borne equally by the parties.

**General**

- 19. If any other matter arises which is not covered in these Conditions, or in the event of dispute, NZS3910:2003 Conditions of Contract for Building and Civil Engineering Construction (inclusive of amendments) will apply.

**Customer Acceptance / Declaration**

- A. I/We have read and understood these Conditions and agree to be bound by them.
- B. I/We are duly authorised to sign this acceptance and declaration form on behalf of the Customer.
- C. I/We authorise the Company to collect, retain and use personal information about the Customer for the purposes of providing goods and services to the Customer on credit and disclosing to any third party details of this and any subsequent dealings the Customer may have with the Company.

**DATED:** .....

**SIGNED by or on behalf of Customer:**

Signature..... Signature.....

Full Name..... Full Name.....

Position..... Position.....