

1. DEFINITIONS

- 1.1 "Centaur Earthmoving" shall mean Centaur Earthmoving Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the party listed as the Customer on the quotation sheet provided by Centaur Earthmoving, any person acting on behalf of and with the authority of the Customer, and/or any person contracting Services and Materials from Centaur Earthmoving.
- 1.3 "Materials" means any materials and/or goods and/or products supplied by Centaur Earthmoving.
- 1.4 "Services" means any service performed by Centaur Earthmoving.
- 1.5 "Services and Materials" means all materials, goods, products, services and advice provided by Centaur Earthmoving to the Customer and shall include without limitation all civil works and contracting services, earthmoving, excavation, landfilling services and the supply of all associated materials and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Services and Materials by Centaur Earthmoving to the Customer.
- 1.6 "Price" shall mean the cost of the Services and Materials as agreed between Centaur Earthmoving and the Customer and unless otherwise stated exclude Goods and Services tax but includes all disbursements e.g. charges Centaur Earthmoving pay to others on the Customer's behalf subject to clause 4 of this contract.
- 1.7 "Property" means the work site where the Services and Materials are performed and any access ways to and from the work site.

2. ACCEPTANCE

- 2.1 Any instructions received by Centaur Earthmoving from the Customer for the supply of Services and Materials shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. PRICE

- 3.1 Where no price is stated in writing or agreed to orally the Services and Materials shall be deemed to be supplied at the current amount as such Services and Materials are supplied by Centaur Earthmoving in the ordinary course of business at the time of the contract.

4. PAYMENT

- 4.1 Payment for Services and Materials, including progress payments and payment of payment claims made in accordance with the Construction Contracts Act 2002 ("the payment claim"), shall be made in full on or before the 7th day following the date of the invoice or the payment claim ("the due date").
- 4.2 Interest may be charged on any amount owing after the due date at the rate of 15% per annum.
- 4.3 Any expenses, disbursements and legal costs incurred by Centaur Earthmoving in the enforcement of any rights contained in these terms of trade shall be paid by the Customer, including any reasonable legal fees or debt collection agency fees.
- 4.4 Until the issuing bank has confirmed that payment has been cleared, receipt of a cheque shall not constitute payment.

5. QUOTATION

- 5.1 Where a quotation is given by Centaur Earthmoving for Services and Materials:

- 5.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- 5.1.2 The quotation shall be exclusive of Goods and Services tax unless specifically stated to the contrary.

- 5.2 Any quotation provided by Centaur Earthmoving is an estimate only. The price charged by Centaur Earthmoving may be increased by the amount of any reasonable increases in the cost of supply of the Services and Materials that are beyond the control of Centaur Earthmoving.
- 5.3 Reasonable increases in the cost of supply of the Services and Materials that are beyond the control of Centaur Earthmoving include but are not limited to increases due to weather conditions, discovery of hazards including but not limited to cables, pipes or rocks, any new information provided by the Customer, and increases in the price of materials required by Centaur Earthmoving to provide the Services and Materials.
- 5.4 The Customer agrees to pay the sum invoiced by Centaur Earthmoving irrespective of any variation from the quotation and in accordance with these terms of trade.
- 5.5 Where Services and Materials are required in addition to the quotation the Customer agrees to pay for the additional cost of such Services and Materials.

6. EQUIPMENT

- 6.1 Any and all equipment brought onto the Property by Centaur Earthmoving shall be at the sole use of Centaur Earthmoving and, other than in an emergency, shall not be used or interfered with in any way whatsoever by the Customer without Centaur Earthmoving's permission. Nor shall the Customer, other than in an emergency, permit any third party to use or interfere with the equipment in any way whatsoever without Centaur Earthmoving's permission.

7. HAZARDS

- 7.1 The Customer shall notify Centaur Earthmoving as to any hazards and/or potential hazards including (but not limited to) cables, pipes, rocks and/or any dangerous chemicals. The Customer shall remove any hazards as reasonably requested by Centaur Earthmoving, and at the customer's cost.
- 7.2 The Customer shall ensure there is no presence whatsoever of asbestos on site, and if any form of asbestos is found, the Customer shall, at its own cost, engage professionals nominated by Centaur Earthmoving to remove the asbestos. Centaur Earthmoving shall be entitled to immediately cease or suspend work until it is satisfied (in its sole and absolute discretion) that it is safe to continue work.

8. DAMAGE TO PROPERTY

- 8.1 Any damage to the Property and/or Centaur Earthmoving's goods and/or materials, caused by any act and/or omission of the Customer, shall be remedied by the Customer, or if necessary, replaced in full by the Customer, in all situations at the Customer's sole cost and on an urgent basis.

9. SUBCONTRACTING

- 9.1 The Customer authorises Centaur Earthmoving to contract either as principal or agent for the provision of Services and Materials that are the matter of this contract.

- 9.2 Where Centaur Earthmoving enters into a contract of the type referred to in clause 6.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.
- 10. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**
- 10.1 Title in any Materials supplied by Centaur Earthmoving passes to the Customer only when the Customer has made payment in full for all Materials supplied by Centaur Earthmoving to the Customer and of all other sums due to Centaur Earthmoving by the Customer on any account whatsoever.
- 10.2 Until all sums due to Centaur Earthmoving by the Customer have been paid in full, it is agreed that Centaur Earthmoving has a security interest in all Materials supplied by Centaur Earthmoving to the Customer.
- 10.3 The Customer gives Centaur Earthmoving an irrevocable licence to enter all premises where it has reasonable grounds to believe the above materials be stored, to inspect, remove or repossess any goods supplied by Centaur Earthmoving and not paid for in full by the Customer.
- 11. DISPUTES**
- 11.1 Either party may take such legal action including the commencement of legal proceedings as deemed appropriate to resolve or determine the dispute .
- 12. LIABILITY**
- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Centaur Earthmoving which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Centaur Earthmoving, Centaur Earthmoving's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 9.1 Centaur Earthmoving shall not be liable for:
- 9.2.1 any loss or damage of any kind whatsoever, arising from the supply of Services and Materials by Centaur Earthmoving to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services and Materials provided by Centaur Earthmoving to the Customer; and
- 9.2.2 any loss or damage resulting from unmarked drains or utilities or for any loss, damage or costs arising from unforeseen circumstances; and
- 9.2.3 any variation in type of Services and Materials supplied.
- 12.3 The Customer shall indemnify Centaur Earthmoving against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Centaur Earthmoving or otherwise, brought by any person in connection with any matter, act, omission, or error by Centaur Earthmoving, its agents or employees in connection with the Services and Materials.
- 12.4 If contrary to the disclaimer of liability contained in these terms and conditions of trade Centaur Earthmoving is deemed liable to the Customer, following and arising from the supply of Services and Materials by Centaur Earthmoving to the Customer, then such liability is limited in its aggregate to \$1,000.00.
- 13. HEALTH AND SAFETY STANDARDS**
- 13.1 The Customer is obliged to ensure that all work sites comply with occupational health and safety statutory requirements regulations and standards and that there are always proper means of access to the work site.
- 13.2 The Customer must provide Centaur Earthmoving with plans for the work site and notify Centaur Earthmoving of any hazards or potential hazards before Centaur Earthmoving commences work. This includes public utilities and any other obstructions.
- 13.3 The Customer must ensure at its own cost that fencing and barriers are in place to prevent access to the work site other than by Centaur Earthmoving and its employees and contractors.
- 14. CONSUMER GUARANTEES ACT 1993**
- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services and Materials from Centaur Earthmoving for the purposes of a business in terms of section 2 and 43 of that Act.
- 15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 15.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Centaur Earthmoving agreeing to supply Services and Materials and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Centaur Earthmoving the payment of any and all monies now or hereafter owed by the Customer to Centaur Earthmoving and indemnify Centaur Earthmoving against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclud4e the customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 16. CANCELLATION**
- 16.1 Centaur Earthmoving 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 Services and Materials to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as provided for in the Insolvency Act 2006.
- Any cancellation or suspension of this agreement shall not affect Centaur Earthmoving'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 Centaur Earthmoving under this contract.

17. MISCELLANEOUS

- 17.1 Centaur Earthmoving shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by Centaur Earthmoving 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 Centaur Earthmoving has under this contract.
- 17.3 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 impaired.
- 17.4 Where the Customer has entered into a separate supply agreement containing additional terms and conditions with Centaur Earthmoving and/or additional terms and conditions are included in any submission, letter, tender or schedules that are intended to form part of any contract ("additional terms and conditions"), these additional terms and conditions shall apply except to the extent that there is any inconsistency between these terms and conditions and the additional terms and conditions, in which case the additional terms and conditions shall prevail.
- 17.5 If the Customer defaults in payment of any sum due to Centaur Earthmoving then the Customer agrees that such default gives rise to a legal or equitable estate or interest in the Customer's land which entitles Centaur Earthmoving to enter a caveat against the Customer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.
- 17.6 The Customer agrees that Centaur Earthmoving may change these terms and conditions of trade from time to time but only by notice to the Customer in writing, which may be by email. The Customer is not permitted to amend these terms and conditions of trade other than with the signed consent in writing from Centaur Earthmoving.
- 17.7 This Agreement shall be governed exclusively by the laws and jurisdiction of New Zealand.