

HADLEE & BRUNTON LIMITED - TERMS OF TRADE

1 GENERAL

- 1.1 All products and services provided to you by Hadlee & Brunton Limited or another member of the Hadlee & Brunton group (*Hadlee & Brunton*) are on the basis set out in these terms unless otherwise expressly agreed in writing.
- 1.2 By requesting the supply of products or services from Hadlee & Brunton you agree to be bound by these terms to the exclusion of all other terms.
- 1.3 Hadlee & Brunton may vary these terms from time to time. Any varied terms will be notified to you in writing or posted on Hadlee & Brunton's website at www.hadleeandbrunton.co.nz. Any varied terms will apply to the provision of all goods and services you order after the terms are posted on this website.
- 1.4 Nothing in these terms requires Hadlee & Brunton to provide any products and services to you.

2 SUPPLY OF PRODUCTS AND SERVICES

- 2.1 Hadlee & Brunton will use its reasonable skill, care and effort in supplying all products and services to you, using resources reasonably available to Hadlee & Brunton, and will use its reasonable efforts to supply all products and services by any agreed delivery date(s) subject to clause 2.2. However, except where Hadlee & Brunton has not used reasonable efforts to achieve the relevant delivery date, Hadlee & Brunton will not be liable for any delay or non-performance in supplying products or services to you.
- 2.2 Hadlee & Brunton will not have any liability to you for any delay or defects in products and materials to the extent that any products Hadlee & Brunton supply to you incorporate materials provided by a third party. Hadlee & Brunton does not have control over the quality of those materials, or the processes that are applied to their manufacture or supply. Hadlee & Brunton will pass on any warranty it receives from the manufacturer or supplier.
- 2.3 Where Hadlee & Brunton is delivering any products without providing an associated service (e.g. installation), delivery of such products is deemed to be completed when Hadlee & Brunton has delivered the products to your address you advise to it at the time of your order. Otherwise delivery of the products is deemed to occur when the associated services are completed.
- 2.4 Within 14 days from delivery of any products or the performance of any services being completed, you must inspect the products and performance of the services and notify Hadlee & Brunton of any damage to or defect in the products or performance of the services.
- 2.5 Risk in respect of all products supplied to you by Hadlee & Brunton will pass to you when delivery of the products is deemed to have been completed in accordance with clause 2.3.
- 2.6 Title to all products supplied to you by Hadlee & Brunton will not pass on delivery, but will remain with Hadlee & Brunton until full payment of all monies owing in respect of such products pursuant to clause 4 has been made, and until title passes you will hold such products as Hadlee & Brunton's bailee and so that the products can be separately identified from all other products held by you.
- 2.7 Without limiting your rights under clause 7.3, products supplied to you may only be returned to Hadlee & Brunton with Hadlee & Brunton's prior written consent (and provided you have notified Hadlee & Brunton within 14 days of delivery of the products to you). Hadlee & Brunton may charge you a fee for delivery, return and handling where there is no material defect in the product returned.

- 2.8 If, in providing the products and services, Hadlee & Brunton encounters unknown problems or conditions (including but not limited to underground, in wall, roof space or flooring conditions and/or worn, damaged or corroded fittings), Hadlee & Brunton will advise you of the same and, where reasonably possible having regard to Hadlee & Brunton's ability to estimate the further work required, provide you with an indicative estimate of further costs to provide the products and services. You may then instruct Hadlee & Brunton to continue (in which case you must pay the amount determined by Hadlee & Brunton for the further products and services based on Hadlee & Brunton's standard charges) or terminate the contract (in which case you must pay Hadlee & Brunton all costs incurred by it to the date of termination and, to the extent not otherwise captured by this clause, any further costs referred to under clause 3.2(a) and (b) below).

3 ACCEPTANCE OF ORDERS

- 3.1 All orders you make for products or services that are not the subject of a quote are accepted by Hadlee & Brunton upon the earlier of Hadlee & Brunton accepting the relevant order in writing, despatch of the products to you or commencement of performance of the services for you, as relevant.
- 3.2 You must accept Hadlee & Brunton's quote before Hadlee & Brunton commences any work. Hadlee & Brunton may withdraw any quote before it is accepted by you, and in any event any quote will lapse without notice if not accepted by you within 30 days after the date of the quote.
- 3.3 You may not cancel any order for products or services (whether fully or in part) without Hadlee & Brunton's written consent and if such consent is given, you must pay for:
 - (a) products that are non-generic (e.g. they are being manufactured or fabricated to specifications prepared by or for you) that have been completed or part-completed prior to cancellation of the order; and
 - (b) any other costs Hadlee & Brunton has reasonably incurred or committed to in anticipation of completing the order prior to cancellation.

4 PRICE

- 4.1 Hadlee & Brunton's standard charges for products and services (including hourly rates and charges for consumables as applicable) applying at the time of despatch or performance will apply to all products and services you order, unless other pricing terms have been agreed with Hadlee & Brunton in writing. Prices are available by calling 03 684 3817.
- 4.2 Hadlee & Brunton may provide you a quote (which will note that it is a fixed price). Otherwise, for any products or services for which an estimate is provided or for which no amount is agreed in advance, Hadlee & Brunton's standard charges will apply.
- 4.3 All prices for products and services set out in Hadlee & Brunton's quote or otherwise as applicable in accordance with these terms exclude GST except as expressly stated otherwise. GST is payable by you at the same time as the price for the products and services.

5 PAYMENT

- 5.1 Payment for all products and services is due on the 20th day of the month following the date of Hadlee & Brunton's invoice, unless other payment terms have been agreed with Hadlee & Brunton in writing.
- 5.2 Without prejudice to any of Hadlee & Brunton's other rights or remedies, in the event of late payment or non-payment or any other breach of these terms by you, Hadlee & Brunton may:

- (a) suspend or terminate any credit facility made available to you (at which time all amounts owed by you to Hadlee & Brunton will become immediately due and payable);
 - (b) recover from you all costs incurred by Hadlee & Brunton arising from such breach (including legal costs on a solicitor client basis and costs of recovery of unpaid amounts); and/or
 - (c) charge interest to you at a rate equal to 2% per month on any monies outstanding, both before and after judgment, from the due date until the date of payment. Interest will be payable on demand.
- (b) where any products are not transported, stored, handled or used in accordance with any directions given by Hadlee & Brunton to you;
 - (c) where the terms of any written warranty have not been complied with;
 - (d) for loss or damage caused by any factors beyond Hadlee & Brunton's control; or
 - (e) for any loss of profit or revenue, loss of use or loss of opportunity or contract, or for any special, indirect, incidental or consequential damage, loss or injury of any kind suffered by you.

5.3 You agree that Hadlee & Brunton may withdraw credit at any time.

5.4 You agree that Hadlee & Brunton may make immediate demand of all monies owing to Hadlee & Brunton on any account if there is any default in payment of any monies owing to Hadlee & Brunton and may set-off any amounts owed by Hadlee & Brunton to you against those owed by you to Hadlee & Brunton.

6 YOUR OTHER OBLIGATIONS

6.1 You are responsible for obtaining any necessary permits and ensuring compliance with all legislation, regulations, by-laws or rules in connection with the installation, operation and provision of the products and services.

6.2 Unless agreed otherwise by Hadlee & Brunton in writing, you must provide Hadlee & Brunton free of charge with:

- (a) all necessary facilities for the delivery of the products and services, including power, lighting, unloading, hoisting and lifting facilities, site preparation and compliant employee amenities; and
- (b) safe storage facilities for protection against theft and damage of the products or any equipment or other items belonging to Hadlee & Brunton.

6.3 You are responsible for arranging and providing convenient and uninterrupted access for the products and provision of services to the proposed place of installation including stairs, lift or crane access as the case may require unless Hadlee & Brunton agrees otherwise in writing, failing which Hadlee & Brunton may charge you additional amounts to cover the additional reasonable costs incurred from such failure.

6.4 If you cannot take delivery of the products or services you are responsible for all additional charges caused by that failure.

6.5 Where installation or supply of the products or services must be co-ordinated with other trades you must provide Hadlee & Brunton with a schedule detailing all relevant information relating to installation or supply with sufficient time allowed for Hadlee & Brunton to meet delivery or supply dates.

7 WARRANTIES AND LIABILITY

7.1 Except for any written warranties given by Hadlee & Brunton to you, all warranties and representations (including those expressed or implied by law) in respect of products and services provided are excluded to the extent permitted by law.

7.2 Notwithstanding any other provision of these terms, in no event will Hadlee & Brunton be liable, whether in contract, tort including negligence or otherwise:

- (a) where you have altered or modified any products or subjected any products to any unusual or non-recommended use, service or handling;

7.3 Notwithstanding any other provision of these terms, Hadlee & Brunton's maximum liability to you (in the event that such liability exists) in respect of any breach of warranty, any breach of these terms or for defective products or services provided is limited at Hadlee & Brunton's option to:

- (a) replacing the products;
- (b) re-performing the services; or
- (c) refunding the price for the relevant products or services paid by you.

Where Hadlee & Brunton elects to replace any products or re-perform any services it will use reasonable endeavours to do so as soon as practicable but will not be liable for any delay in such replacement or re-performance.

7.4 Notwithstanding any other provision of these terms, Hadlee & Brunton's liability to you arising under or in connection with these terms or in any way related to the provision of products or services (whether such liability arises in contract, tort (including negligence), under statute or otherwise) is limited to the amount paid by you for the relevant products or services in relation to which the liability arises.

7.5 Where you are ordering products or services from Hadlee & Brunton for the purposes of trade, Hadlee & Brunton and you agree that we are both entering into transactions with each other for the purposes of trade and that, having regard to all relevant circumstances, it is fair and reasonable that the provisions of the Consumer Guarantees Act 1993 do not apply to those transactions (including all products and services supplied pursuant to these terms) to the fullest extent permitted by law.

7.6 You also agree that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to Hadlee & Brunton or any of its directors, employees or contractors in relation to these terms.

8 SECURITY INTEREST

8.1 By virtue of the retention of title held by Hadlee & Brunton under clause 2.6 Hadlee & Brunton holds a security interest in all products supplied by Hadlee & Brunton to you, for the purposes of the Personal Property Securities Act 1999 (PPSA).

8.2 You agree (to the maximum extent permitted by law) with Hadlee & Brunton:

- (a) to provide all information and provide such assistance necessary to allow Hadlee & Brunton to register, maintain and enforce its security interest;
- (b) to waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to Hadlee & Brunton's security interest;
- (c) to contract out of your rights under the sections referred to in section 107(2)(a) and (c) to (i) of the PPSA; and

- (d) that nothing in sections 114(1)(a), 133 and 134 of the PPSA applies to these terms, and accordingly to contract out of these sections.
- 8.3 Hadlee & Brunton's security interest continues in any products into which those products are incorporated, and in any proceeds arising from the sale of the products.
- 8.4 Hadlee & Brunton may enter any premises occupied by you or on which products are situated at any time after a default by you occurs (or before any such event if Hadlee & Brunton believes its occurrence is likely) to remove and repossess any products and any other property in which products are incorporated. To the extent permitted by law, Hadlee & Brunton will not be liable for, and you indemnify Hadlee & Brunton against, any damage or loss you or any third party incurs as a result of Hadlee & Brunton's actions under this clause.
- 10.5 **Disputes:** If a dispute arises, the parties will try to settle the dispute between themselves before resorting to litigation or arbitration.
- 10.6 **No rule of construction:** No rule of construction applies to the interpretation of these terms of trade to the advantage or disadvantage of any one party on the basis that a party prepared the Contract or any relevant part of it.
- 10.7 **Entire agreement:** These terms, together with Hadlee & Brunton's quote (if any), is the entire agreement between you and Hadlee & Brunton for the supply of products and services, and replaces any earlier correspondence, discussions and agreements on that subject matter.
- 10.8 **Waiver:** Any waiver of these terms will not be effective except to the extent agreed in writing.

9 HEALTH AND SAFETY

- 9.1 In supplying products and services to you, Hadlee & Brunton personnel may come onto your property from time to time. When our personnel do this, you will carry out suitable inductions, advise our personnel of any hazards to which they may be exposed, and ensure you have appropriate procedures in place for dealing with any incidents. Hadlee & Brunton may charge you at its standard rates for time spent being inducted over 30 minutes. Hadlee & Brunton will ensure its personnel comply with your reasonable instructions in relation to health and safety while on your property, including any requirements in any site specific health and safety plan for your property that you provide and that are relevant to Hadlee & Brunton's access to or use of your property. Hadlee & Brunton and you will each also:
- (a) consult, co-operate and co-ordinate with the other in relation to health and safety matters;
 - (b) comply with your and Hadlee & Brunton's respective obligations under these terms; and
 - (c) comply with the Health and Safety at Work Act 2015, and all other relevant health and safety laws applying to your property and your operations (to the extent applicable).

10 MISCELLANEOUS

- 10.1 **Your information and privacy:** Hadlee & Brunton will collect and hold personal information in accordance with Hadlee & Brunton's privacy policy (as updated from time to time). You can find Hadlee & Brunton's current privacy policy on Hadlee & Brunton's website at www.hadleeandbrunton.co.nz. If you provide personal information to Hadlee & Brunton, you confirm you are authorised to provide such information and that Hadlee & Brunton is authorised to disclose such personal information for the purposes and to the people as set out in Hadlee & Brunton's privacy policy..
- 10.2 **Announcements:** You agree not to make any public announcements (including posts on social media or responses to media queries) in relation to Hadlee & Brunton or its products or services without Hadlee & Brunton's prior written consent.
- 10.3 **Intellectual property:** Hadlee & Brunton retains ownership of all of its pre-existing intellectual property, and owns all new intellectual property arising from the provision of products and services under these terms. You may only use this intellectual property for the sole purpose of obtaining the benefit of the products and services Hadlee & Brunton provides to you.
- 10.4 **Force majeure:** Non-performance by Hadlee & Brunton of any of its obligations under these terms shall be excused, without liability, during the time and to the extent that such performance is prevented, wholly or substantially, by any event outside of the control of Hadlee & Brunton.