

Inex Plastering Services Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Contractor" means Inex Plastering Services Ltd, its successors and assigns or any person acting on behalf of and with the authority of Inex Plastering Services Ltd.
- 1.2 "Customer" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Works" means all Works or Materials provided by the Contractor to the Customer at the Customer's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Works as agreed between the Contractor and the Customer in accordance with clause 4 below.
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts provision of any Works.
- 2.2 These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Contractor.
3. **Change in Control**
- 3.1 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.
4. **Price and Payment**
- 4.1 At the Contractor's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Contractor to the Customer in respect of Works provided; or
 - (b) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within thirty (30) days.
- 4.2 The Contractor reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be provided is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, obscured building defects, safety considerations, prerequisite work by any third party not being completed or of the required quality, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.
- 4.3 At the Contractor's sole discretion, a deposit may be required.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
 - (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Contractor.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any provision of Works by the Contractor under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
5. **Provision of the Works**
- 5.1 Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
 - (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify the Contractor that the site is ready.
- 5.3 Any time specified by the Contractor for provision of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of any delay. However both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that the Contractor is unable to provide the Works as agreed solely due to any action or inaction of the Customer then the Contractor shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.
6. **Risk**
- 6.1 The Customer acknowledges that Materials provided may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Contractor will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
7. **Customer's Responsibilities**
- 7.1 It is the intention of the Contractor and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Works to be undertaken (where in the Contractor's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 7.2 The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that the Contractor shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
8. **Access**
- 8.1 The Customer shall ensure that the Contractor has clear and free access to the worksite at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
9. **Title**
- 9.1 The Contractor and the Customer agree that ownership of the Materials shall not pass until:
 - (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Customer has met all of its other obligations to the Contractor.
- 9.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:
 - (a) until ownership of the Materials passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Materials and unless the
- Materials have become fixtures must return the Materials to the Contractor on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
- (d) the Contractor must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- (f) unless the Materials have become fixtures the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
- (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
- (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
10. **Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Customer to the Contractor for Works – previously supplied by the Contractor to the Customer (if any) and all Materials that will be supplied in the future by the Contractor to the Customer.
- 10.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Contractor.
- 10.3 The Contractor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 10.1 to 10.5.
11. **Security and Charge**
- 11.1 In consideration of the Contractor agreeing to provide Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 11.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
12. **Customer's Disclaimer**
- 12.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Contractor by the Contractor and the Customer acknowledges that the Works are bought relying solely upon the Contractor's skill and judgment.
13. **Defects, Errors and Omissions**
- 13.1 The Customer shall inspect the Works on completion and shall within twenty-one (21) days of such time (being of the essence) notify the Contractor of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Contractor an opportunity to inspect the Works within a reasonable time following such notification if the Customer believes the Works are defective in any way. If the Customer shall fail to comply with these provisions the Works shall be presumed to be free from any defect or damage. For defective Works, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) rectifying the Works or re-providing the Works.
14. **Warranties**
- 14.1 Subject to the conditions of warranty set out in clause 14.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within five (5) years of the date of completion (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 14.2 The conditions applicable to the warranty given by clause 14.1 are:
 - (a) the warranty shall not be valid where the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions. A Producer Statement (PS3) will not be provided until all outstanding monies are settled;
 - (b) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain the Works; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of the Works otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of the Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (c) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
 - (d) in respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 14.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
15. **Consumer Guarantees Act 1993**
- 15.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Contractor to the Customer.
16. **Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes the Contractor any money the Contractor shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the provision of Works to the Customer and/or withhold the provision of any producer statement and/or warranty to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 16.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
17. **Cancellation**
- 17.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel provision of the Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels the Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of orders for Materials made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once an order has been placed to the supplier.
18. **Privacy Act 1993**
- 18.1 The Customer authorises the Contractor or the Contractor's agent to:
 - (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 18.2 Where the Customer is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Customer shall have the right to request the Contractor for a copy of the information about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Customer held by the Contractor.
19. **Construction Contracts Act 2002**
- 19.1 The Customer hereby expressly acknowledges that:
 - (a) the Contractor has the right to suspend the Works within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer; and
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Contractor suspends the Works, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Contractor exercises the right to suspend the Works, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Contractor under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Contractor suspending the Works under this provision.
20. **General**
- 20.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Hawkes Bay.
- 20.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 20.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 20.6 The Customer agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Contractor to provide any Works to the Customer.
- 20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Inex Plastering Services Ltd – Terms & Conditions of Trade

I certify that the above information is true and correct. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Inex Plastering Services Ltd which form part of, and are intended to be read in conjunction with this **Terms & Conditions of Trade** and agree to be bound by those conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

SIGNED (CUSTOMER): _____ Name: _____ Position: _____ ID: _____ Date of Birth: _____ (Driver's Licence, Passport, etc.)	SIGNED (WITNESS TO CUSTOMER'S SIGNATURE): _____ Name: _____ Date: _____ Address: _____ Postcode: _____
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SIGNED (CONTRACTOR): _____ Name: _____ Date: _____

This is a **Terms & Conditions of Trade** under the Construction Contracts Act 2002.
If you are a "**Residential Occupier**" please read clause 19 on the reverse.