

STANDARD TERMS AND CONDITIONS

These are the standard terms of trade for Nelmac Limited. Where you accept a quote or tender offered to you by Nelmac Limited, it will be on these terms unless agreed otherwise in writing and signed by both parties.

1. Valid Period

Any quote is valid for one calendar month.

2. Acceptance

Acceptance will be notified by returning the email (or written document) with confirmation of acceptance of the quote/tender and these terms and conditions.

3. Payment

All invoices will be treated as payment claims pursuant to the Construction Contracts Act 2002.

4. Due Date

Payment and/or the provision of any payment schedule must be made/submitted by the 20th of the month following the date of any invoice.

5. Default

Where any amount remains outstanding under any invoice in excess of 30 days following due date for payment which is not disputed by a payment schedule, the customer will be liable to pay the actual costs of collection (including solicitors costs) together with interest at 12% per annum calculated daily from the date the debt was due for payment.

6. Nelmac Responsibilities

Nelmac will:

- a. undertake all building work in a proper and competent manner and in accordance with any plans and specifications which define the scope of works;
- b. where the client is charged on a time and materials basis, keep a detailed record of individual worker time allocation and materials used and submit an accurate account;
- c. carry appropriate third party insurance for the building work;
- d. ensure compliance by its employees with Health and Safety regulations and requirements;
- e. submit on request a written proposal for variation of contract works for customer approval;
- f. endeavor to undertake and complete the contract works in a timely and efficient manner, subject to weather conditions, availability of materials and its competing business demands;

- g. keep the customer informed of the progress of the contract works and the intended program to completion of works.

7. Customer Responsibilities

The customer will:

- a. Provide Nelmac with all relevant information affecting the work site including planning and/or regulatory restrictions, location of public or private utilities and services.
- b. Provide Nelmac with information on all easements, restrictive covenants or any relevant limitation which may affect the owners title including restrictions under any Consent Notice under Section 221 Resource Management Act.
- c. Where the customer is not the owner of the property, they shall obtain in advance all necessary permissions to enter onto the work site and undertake the building work.
- d. Where access over private land is required, the customer will obtain all rights and necessary permissions for Nelmac and its agents to cross such land.
- e. Obtain all necessary building consents, planning permissions and/or resource consents and any other statutory requirement for the purpose of lawfully undertaking the contract work. Where the works require a building consent, the customer is responsible for obtaining a code compliance certificate.
- f. Indemnify Nelmac for any liability arising from the customers breach of contract including any liability arising from its failure to obtain any necessary planning or consent requirement from Council.
- g. Provide Nelmac on request, with copies of documentation confirming satisfaction of the requirements listed as (a) to (f) above.
- h. Take care to ensure all plantings, and newly constructed plant, systems and equipment are properly cared for and maintained in accordance with general practice, any manufactures recommendations and/or advice from Nelmac.

8. General

- a. These terms and conditions are guided by the principles set out in the Standards New Zealand Standard NZS 3910:2013 which are aligned with the requirements of the Construction Contracts Act 2002.
- b. No variation of these terms shall be allowed otherwise than by written agreement signed by both parties.
- c. Where the completion of the contract works becomes impossible or impractical due to any reason beyond the reasonable control of the parties, then either party may give notice to cancel the contract and Nelmac shall be entitled to payment for work to the date of cancellation.
- d. Assignment – this contract may only be assigned if both the owner and the builder agree in writing.
- e. Notices – communication which are required to be in the form of Notices must be in writing addressed to the other party and delivered by email and supported by evidence of successful receipt.
- f. Waiver – no delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a particular breach is not a waiver of any other breach.
- g. Governing law – New Zealand law shall apply to this contract. New Zealand courts have exclusive jurisdiction.

- h. Personal information – any personal information given by one party to the other must be kept private, unless expressly agreed in writing. The personal information must only be used for the purpose for which it was given and Nelmac shall ensure that all private information is stored and used in accordance with its Confidentiality of Information Policy (306-3).
- i. All monetary amounts included in this contract exclude GST, unless stated otherwise.
- j. The customer agrees that Nelmac may use their email address for advising of news, updates and any services provided by Nelmac from time to time.

9. Disputes Resolution

a. Good faith

If a dispute arises between the customer and Nelmac relating to this contract both parties must act in good faith and endeavor to resolve the dispute between them amicably and as soon as possible.

b. Mediation

- i. if a dispute is not resolved in terms of (a) within seven working days either party may give a notice to the other party requiring that the dispute be referred to mediation.
- ii. The parties must endeavor to agree on a mediator and shall submit the dispute to him or her. If they cannot agree on a person to act as mediator, the mediator must be appointed at the request of either party by the president for the time being of the Nelson branch of the New Zealand Law Society. The guidelines governing the mediation are to be set by the parties. Failing agreement on the guidelines within five working days after the appointment of a mediator, the mediator must set the guidelines which will govern the mediation.
- iii. The parties may at any stage agree to invite the mediator to give a decision to determine the matter in dispute. In that case, and if the mediator agrees to give a decision, the mediator's decision is binding on the parties.

c. Adjudication

- i. At any time, either party may give a notice to the other requiring the dispute to be referred to adjudication under the Construction Contracts Act 2002.
- ii. Unless the parties agree otherwise, adjudication must not suspend or delay any mediation or arbitration in relation to that dispute.

d. Arbitration

- i. If settlement has not been achieved within 50 working days of a notice requiring mediation and/or adjudication, either party may refer the dispute to arbitration under the Arbitration Act or any Act passed in its place. Either party may give a notice to the other party referring the dispute to arbitration.
- ii. If the parties cannot agree on an arbitrator within five working days from the date on which the notice requiring arbitration was first given by one party to the other, either party may request the President of the Nelson branch of the

New Zealand Law Society, the President of AMINZ or his or her nominee to appoint the arbitrator. The costs of an arbitrator (subject to any award by the arbitrator) are to be borne equally by the parties.

- iii. The arbitrator may award interest upon any amount due and payable under any award made by the arbitrator at a rate and for a period determined by the arbitrator.
 - iv. The award of the arbitrator is final and binding on the customer and Nelmac.
- e. **Suspension of Work**
- i. Nelmac will be entitled to suspend work if dispute resolution is required.
 - ii. No payment claim, payment schedule or payment due or payment is to be withheld on account of dispute proceedings.
 - iii. The cost of adjudication shall be determined in accordance with sections 56 and 57 of the Construction Contracts Act 2002.

These terms and conditions were last modified on 30 January 2014.