

## TERMS OF TRADE

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In these Terms of Trade we have used "we", "us", and "our" to refer to **PEDLEY SLURRY SERVICE LIMITED** and "you" to refer to our Customers.

By requesting Work from us, you agree to these Terms of Trade to the exclusion of any of your terms and conditions. These Terms of Trade will apply to all Work we provide for you from time to time (except where agreed in writing otherwise).

### 1. No obligation to accept requests for Work

- 1.1 The placement of an order for Work with us will for all purposes be deemed to be acceptance by the you of these Terms of Trade.
- 1.2 At time will we be obliged to accept any request to perform Work for you and we reserve the right to refuse any request from you at any time.
- 1.3 We may also, at our discretion, impose further terms and conditions prior to undertaking any Work for you. These may include, but are not limited to, your directors or shareholders giving a personal guarantee for you to secure our costs or our requiring you give us some further security for our costs.

### 2. How we will estimate the Work

- 2.1 Unless stated otherwise, any price we give you for Work is an estimate ("the Estimate") on a plus GST basis of the anticipated cost for us to complete that Work. The Estimate is subject to clause 4 below.
- 2.2 The Estimate is open for acceptance for 10 days after it is dated unless withdrawn by us prior to acceptance.
- 2.3 We will not commence the Work until you have confirmed you accept the Estimate.

### 3. How prices will be calculated

- 3.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Work, you shall pay to us our actual cost of completing the Work ("the Actual Cost") which will be calculated by totalling the following:
  - (a) the number of hours of service multiplied by the hourly rates for the workers or equipment involved (which may be adjusted for such matters as complexity, urgency, importance or specialised knowledge) on the date which the Work is undertaken or if the supply occurs over more than one day, the relevant hourly rates on the last day on which services are rendered;
  - (b) any disbursements (including without limitation delivery and transportation costs) incurred by us on your behalf;
  - (c) the cost of any goods supplied by us as part of the Work.
- 3.2 We will provide you with the hourly rate of the workers or equipment carrying out the Work for you on request.
- 3.3 The Actual Cost and all prices are plus GST and other taxes.
- 3.4 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.
- 3.5 In the event these Terms of Trade are terminated in accordance with clause 7.2(c) or by you under clause 14 prior to completion of the Work, you must immediately pay us the Actual Cost at the termination date.

### 4. How you will make payments

- 4.1 We may require you to pay a deposit, being an advance payment for the Work, before we commence the Work.
- 4.2 Payment for the Work (and any associated expenses and disbursements) is due on the 20th day of the month following the date of our invoice except where we have agreed in writing that other terms shall apply ("the Due Date").
- 4.3 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 16% per annum, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
- 4.4 Notwithstanding clause 4.3, if payment is outstanding for 7 days from the Due Date, we may suspend performing the Work on credit until the date of payment in full (subject always to clause 4.5). You must pay in cash for any Work done by us until payment is made in full (together with any accrued interest).
- 4.5 We may notify you at any time that we have ceased to carry out the Work on credit. This cessation does not relieve you for amounts owing up to the date on which the contract is terminated.
- 4.6 Payment of all money shall be without set-off or deduction of any kind.
- 4.7 We will apportion payments to outstanding accounts as we think fit.

### 5. How the Work will be performed

- 5.1 We will:
  - (a) perform the Work with reasonable skill, care and diligence in a professional manner;
  - (b) perform the Work within the parameters of any resource consent notified to us by you in advance;
  - (c) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you (subject to clause 6.3 below and any commitments to other customers);
  - (d) liaise with you during the course of performing the Work in accordance with your reasonable requirements.
- 5.2 You will give reasonable assistance to enable us to perform the Work by:
  - (a) giving clear instructions;
  - (b) ensuring that there is easy and safe access to any ponds in which Work is to be undertaken;
  - (c) promptly providing any information or content required from you for us to complete the Work;
  - (d) notify us prior to the commencement of Work of any potential hazards on your property that may pose a risk to our employees or equipment, including but not limited to:
    - (1) weight and size restrictions or capacity on bridges and culverts;
    - (2) any sink holes, rubbish dumps or other depressions in any paddocks on your property;
    - (3) any waterways on your property (such as streams, drains or ponds);
  - (e) keeping any pond in which Work is to be undertaken free of debris, including but not limited to plastic, metal, tyres, posts and animal remains;
  - (f) providing us with facilities to ensure that our vehicles are clean enough to legally travel on roads following the provision of Work (or can be cleaned to the standard at your site);
  - (g) informing us of all relevant resource consent information in relation to your property, including consent numbers and any directions for special spreading methods.
  - (h) ensuring that the Work is fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices.
- 5.3 If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.

### 6. Our liability to you

- 6.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 6.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Work and/or goods from us for the purposes of a business in terms of sections 2 and 43 of that Act.
- 6.3 Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause 6.5, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work or goods provided by us to you.
- 6.4 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Work.

- 6.5 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the amount of the Actual Cost. If goods are returned by you, or if you make a claim in writing to us in relation to the goods or services provided under the Work, we may, in our discretion, repair or replace the goods or re-perform the services, or refund the amount of those goods or services to you, provided that:
- (a) the goods must be returned or the claim must be made in writing to us within fourteen (14) days of the goods or services being provided; and
  - (b) you must supply the date and number of any invoice relating to the Work; and
  - (c) we must have a reasonable opportunity to inspect the Work.
7. **What will happen if you default**
- 7.1 You will have committed an "Event of Default" if:
- (a) you fail to pay any money owing on the Due Date;
  - (b) you sell, part with possession or dispose of any goods or do anything inconsistent with our ownership of the goods prior to making payment in full to us;
  - (c) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
  - (d) you neglect or fail to carry on your business to our reasonable satisfaction, or if there is a significant deterioration in your trading or asset position;
  - (e) you are otherwise in breach of your obligations under these Terms of Trade.
- 7.2 If an Event of Default occurs then, in addition to any remedies we may have at law, we may do one or more of the following:
- (a) suspend the Work in accordance with clause 4.4;
  - (b) charge default interest in accordance with clause 4.3; and
  - (c) immediately terminate these Terms of Trade by notice in writing to you.
8. **How our intellectual property is protected**
- 8.1 In respect of Intellectual Property used in or arising from the production of the goods or the performance of the Work:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms of Trade (whether you or us);
  - (b) any new Intellectual Property will be dealt with in accordance with this clause 10.
- 8.2 If any Work is to be undertaken based on your designs, you warrant that the undertaking of the Work by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the Work infringes any patent, copyright or other rights of any other person.
- 8.3 Subject to clause 8.1(a) we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) generated or used in the Work, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
- 8.4 We shall retain exclusive worldwide ownership at all times of our methods of working, techniques, ideas, skills and know-how.
- 8.5 This clause 8 shall continue in force as between the parties notwithstanding the termination of these Terms of Trade or the completion of the Work.
9. **What we may and may not do with your information**
- 9.1 You authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
  - (b) to disclose information about you:
    - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
    - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.
10. **How disputes will be resolved**
11. If a dispute arises out of or in connection with these Terms of Trade, or the breach, termination, validity or subject matter of it, the parties agree to endeavour to settle the dispute by mediation administered by LEADR (Leading Edge Alternative Dispute Resolvers) before commencing legal proceedings. The mediator will be the person agreed by the parties. LEADR will assist the parties by providing a list of professional mediators. If the parties fail to appoint a mediator within 14 days of mediation being requested by either party, the mediator will, on request by either party, be appointed by the President of the New Zealand Law Society or the President's nominee.
- 11.1 Pending resolution of any dispute you agree to continue at all times to meet your payment obligations under clause 4 above, provided that a disputed amount on an invoice may be withheld only to the extent of the dispute.
12. **Circumstances beyond our control**
- 12.1 We shall not be liable for delay or failure to perform the Work if the cause of delay or failure is beyond our control.
13. **Termination**
- 13.1 Either party may terminate these Terms of Trade by giving one month's written notice to the other party.
14. **General Terms**
- 14.1 When visiting your place of business, we will be entitled to assume that any person who gives us directions or instructions to us is entitled to do so except where you have expressly advised us otherwise.
- 14.2 Any notice may be given by phone, in person, post or email to you (or where you are a company, to any of your directors) to your last known place of business or any address of which we have been notified by you or which can be found in any publicly searchable register.
- 14.3 We shall be entitled at any time by notice in writing to you to vary any provision of these Terms of Trade and you shall be bound by such variation.
- 14.4 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.
- 14.5 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade.
- 14.6 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness.
- 14.7 This agreement constitutes the entire agreement between the parties as to its subject matter and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.
15. **Definitions**
- 15.1 In these Terms of Trade:
- ""Intellectual Property"" includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).
  - ""Work"" means wastewater cleaning and removal, solid and liquid spreading and dispersal and other related agricultural or other services as may be requested from time to time and the production or supply of any goods by us as part of or related to such services,
- 15.2 The rule of construction known as the contra proferentem rule does not apply to these Terms of Trade.
- 15.3 Words importing the singular include the plural and vice versa.
- 15.4 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms of Trade.
- 15.5 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.
- 15.6 References to a statute include references to:
- (a) regulations, orders, rules or notices made pursuant to that statute;
  - (b) all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
  - (c) any statute passed in substitution of that statute.
- 15.7 References to "us" include our employees, contractors and agents.