



## Ngā Whakaritenga Hokohoko

# General Terms of Trade

Gisborne District Council's general terms of trade

1. By placing your order for goods or services with Gisborne District Council (also referred to in these General Terms of Trade as “we”, our and us) you (meaning the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from us, and where appropriate referred to as your) accept and agreed to be bound by these General Terms of Trade (also referred to as these terms) set out below.
2. These General Terms of Trade, any invoices, order or application forms or other documents or statements issued by us describing goods or services [to be] supplied, and including any specific payment terms, are the full agreement between us and you. Please read these terms carefully.
3. We may vary these terms in whole or part from time to time. If we do, the varied terms will be incorporated into our agreement with you relating to any order you place for goods or services from us from the date the modified terms take effect.
4. We will make all reasonable efforts to fulfil orders for goods or services placed with, and accepted by, us, but we do not guarantee that the goods or services will always be available. We will advise you as soon as possible if any order cannot be filled and may, at our discretion (subject to any statutory requirement), refund to you any money paid to us for that order. We may request additional information regarding any order that you have placed with us in order to process the order and provide you with the goods or services. You agree to supply such information to us on request.
5. We will make all reasonable efforts to ensure that the descriptions of goods and services and prices shown in our publications and, if applicable, on our website, are accurate and up-to-date. However, we reserve the right to adjust the actual price charged if the prices shown are incorrect, and to vary our prices and product descriptions at any time (with notice), subject to the requirements of Section 150 of the Local Government Act 2002.
6. Title to all goods supplied to you will be retained by us until we receive payment in full for those goods. All risk of loss of, or damage to, the goods passes to you on delivery of the goods to you.
7. We will deliver the goods or supply the services to you in person or to an address specified by you within New Zealand in accordance with any specific terms we may have in place in relation to that delivery. We may charge you for the cost of delivery within New Zealand. If the delivery address specified by you is outside New Zealand, we will charge all packaging and postage costs to you. Subject to any statutory requirement to deliver certain goods or services within a specified time in respect of the goods or services you have ordered, anything said by us as to the time for delivery of goods or supply of services shall be approximate only and we will not be liable to you for failure to supply the goods or services by or at such time on any grounds whatsoever, including negligence by us. We will not be liable for failure to deliver any goods or supply any services where such failure is caused by circumstances beyond our reasonable control.
8. To the extent permissible by law, all guarantees, conditions, warranties, descriptions, representations, and conditions as to fitness or suitability for purpose, tolerance of any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded.
9. You warrant that any details you provide on or in relation to any invoice, order or application form, or other document or statement issued by us, are true and correct. We are not bound by any error or omission on any invoice, order or application form, or other document or statement issued by us. You agree to indemnify us for any consequences resulting from incorrect information provided by you on or in relation to any invoice, order or application form, or other document or statement issued by us.

- 10.** You warrant that you are 18 years of age or over and have the full legal capacity to agree to and enter into these terms as a binding legal contract.
- 11.** You agree that where you acquire goods or services from us for the purpose of a business, the provisions of the Consumer Guarantees Act 1993 do not apply to our supply of those goods or services.
- 12.** Where the Consumer Guarantees Act 1993 applies, to the fullest extent permitted by law, our liability for breach of any implied warrant or conditions which cannot be excluded is limited, at our option to:
- a. In the case of services, the supply of the services again or the payment of the cost of having services supplied again; or
  - b. In the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired.
- 13.** To the extent permissible by law, and apart from refunding to you (at our discretion) the price paid for any goods or services which we are unable to supply, we have no liability to you for any loss or damage (either direct, indirect or consequential, including any loss of profit) suffered by you or any other person as a result of any failure or delay in providing the goods or services.
- 14.** Despite anything in clause 12 or elsewhere in these terms, to the extent permissible by law, our liability, whether in contract, pursuant to cancellation of these terms or any order placed by you, in tort, or in any other way, concerning all claims for loss, damage or injury which arise directly or indirectly from our agreement with you, shall not in aggregate exceed the price paid or payable by you for the goods or services in relation to which the loss, damage or injury arose.
- 15.** In addition to the indemnity contained in clause 9, to the extent permissible by law, you agree to indemnify us for any reasonably foreseeable costs (including settlement and legal fees) damages, losses or expenses that we may incur, suffer or become liable for as a result of:
- a. Your breach of the terms applying to the provision of the goods or services to you (including these General Terms of Trade);
  - b. Your negligent acts, error or omissions; or
  - c. Any claim, suit, action or proceeding brought by a third party against us as a result of the matters set out in paragraphs (a)-(b).
- 16.** Nothing in clause 14 limits any rights or remedies we may have under statute or under the general law.
- 17.** Waiver or variation of these terms by us will only be effective if given in writing by an authorised person. If we waive any of these terms the waiver will not affect our rights under these terms at any future time.
- 18.** Subject to any statutory requirements, if a dispute arises relating to any order placed by you and/or in relation to our agreement with you, which cannot be resolved by discussion the parties will proceed to try to settle the dispute by mediation before resorting to litigation or arbitration.
- 19.** You shall pay all sums due to us in New Zealand dollars in full without deduction of any nature whether by way of set off (legal, equitable or otherwise) counterclaim or otherwise, at the time you place your order for goods or services with us or at such other time as may be provided for in the specific payment terms (if any under our agreement or specified in the relevant Council policy (the due date). You agree, however, that to the extent permissible by law, all moneys which we may owe you on any account whatsoever may, at our option, be set off against payments due by you to us.
- 20.** If you fail to make payment by the due date, then we may, in addition to any other remedy, charge penalty interest on the amount not paid at such rate as may be charged by us from time to time.
- 21.** You will pay all costs and disbursements (including debt collection agency costs and legal costs on a solicitor-client basis) incurred by us in recovering or attempting to recover any amounts outstanding in relation to our delivery of goods or supply of services to you.
- 22.** To the extent permissible by law we reserve the right to suspend delivery or supply of further goods or services if the terms of payment are not strictly adhered to by you.
- 23.** To the extent permissible by law we shall not be obliged to supply goods or services to any person and are entitled to refuse to supply goods or services (but will give our reason for doing so).
- 24.** These terms and conditions are governed by and shall be construed in accordance with New Zealand law. You unconditionally submit to the exclusive jurisdiction of the New Zealand courts.