

# Terms and Conditions of Trade for Clark Drainage Limited

Last updated: May 28, 2024

Please read these terms and conditions carefully before using Our Service.

## Interpretation and Definitions

### Interpretation

The words of which the initial letter is capitalised have meanings defined under the following conditions. The following definitions shall have the same meaning regardless of whether they appear in singular or in plural.

### Definitions

For the purposes of these Terms and Conditions:

- **Affiliate** means an entity that controls, is controlled by or is under common control with a party, where "control" means ownership of 50% or more of the shares, equity interest or other securities entitled to vote for election of directors or other managing authority.
- **Country** refers to: New Zealand
- **Company** (referred to as either "the Company", "We", "Us" or "Our" in this Agreement) refers to Clark Drainage Limited, 45 Roy Crescent, Concord, Dunedin 9018.
- **Goods & Services** means the products (including any parts or accessories), materials and/or services supplied by Clark Drainage Limited to the Customer as agreed in writing between Clark Drainage Limited and the Customer (and "Goods" and "Services" have corresponding meanings).
- **Terms and Conditions** (also referred as "Terms") mean these Terms and Conditions that form the entire agreement between You and the Company regarding the use of the Service.
- **GST** means goods and services tax payable pursuant to the Goods and Services Tax Act 1985
- **Quote** means the estimated price for Goods and Services provided to a Customer by Clark Drainage Limited which includes the Goods and/or Services, price, payment terms, Specifications, date and address for Delivery
- **Specifications** means the Goods and Services specifications agreed between the parties in a Quote from [clarkdrainage@outlook.com](mailto:clarkdrainage@outlook.com)
- **The Customer** means the individual accessing or using the Goods & Services, or the company, or other legal entity on behalf of which such individual is accessing or using the Service, as applicable.

### Acknowledgment

These are the Terms and Conditions governing the use of this Service and the agreement that operates between the customer and the Company. These Terms and Conditions set out the rights and obligations of all customers regarding the Service provided. These Terms and Conditions apply to all who engage in the Services provided by Clark Drainage Limited. By either verbally

agreeing to, either by phone conversation or written communication for example but not limited to, email or social media message. The Customer agrees to be bound by these Terms and Conditions.

### Application and Account (where applicable)

The Customer shall advise Clark Drainage Limited of any changes to the Customer's contact details or to any of the other information provided on the New Customer Registration Form. Clark Drainage Limited can restrict the amount of credit provided to the Customer, and may change that limit from time to time without prior notice. Clark Drainage Limited may close or suspend the Customer's Account at any time. On closure of the Customer's Account all of the Customer's rights under these Terms and Conditions shall terminate, except for any rights that have accrued to the Customer prior to the closure of the Customer's Account, and all of the Customer's obligations to Clark Drainage Limited continue under these Terms and Conditions until those obligations have been satisfied to Clark Drainage Limited's satisfaction.

### Quoted Work and Orders

Quotes are valid for 14 days from the date of quotation unless otherwise stated by Clark Drainage Limited in writing and may be cancelled or amended within that period upon notice to the Customer. Clark Drainage Limited Quote is given without commitment and no contract between Clark Drainage Limited and the Customer shall arise unless and until the Customer has accepted Clark Drainage Limited's Quote either by email or via the XERO link. Clark Drainage Limited may require the Customer to pay a 30% deposit before any Goods or Services are provided. Receipt of any order from the Customer accepting a Quote will be deemed to be acceptance by the Customer of these Terms and Conditions.

### Prices

All Goods and Services will be charged at rates applicable at the date of billing. The Customer must pay the prices charged. Unless otherwise stated all prices are exclusive of GST and other taxes which must be paid by the Customer. Where a quote is given dependent on information supplied by the Customer, the Customer will be responsible for the accuracy of the information given, and for the supply of all relevant particulars. Any increased cost incurred resulting from any inaccuracy or omission shall be borne by the Customer alone and shall be in addition to the price quoted in either the Quote or Contract as applicable.

Pricing does not cover any cleaning or removal of sewage that has discharge from drain.

### Payment

Clark Drainage Limited will invoice the Customer for Goods and Services supplied after the completion of the work agreed to (unless agreed in writing) All invoices are payable by the Customer 7 days from the invoice date ("Due Date") to Clark Drainage Limited as directed on the invoice, except where Clark Drainage Limited has agreed otherwise in writing. The Customer may not deduct, offset or withhold any amount from any money owing to Clark Drainage Limited without Clark Drainage Limited prior

written consent and other than prior approved retentions under the Construction Contracts Act 2002. Notwithstanding any other provision herein, if payment is not made by the Customer on the Due Date for payment, then (without prejudice to any of Clark Drainage Limited's other rights and remedies) the Customer will be in default and Clark Drainage Limited may: (a) suspend or terminate supply of Goods and Services; (b) make immediate formal demand for all monies due and payable to Clark Drainage Limited on any account whatsoever which monies shall then immediately fall due & payable; (c) charge the Customer default interest on any amount not paid at the rate of 5% per month accrued on a daily basis from the due date until the date of payment in full; (d) pass onto Clark Drainage Limited appointed collection agent for the purposes of debt recovery any information Clark Drainage Limited may hold regarding the Customer and their dealings with Clark Drainage Limited. The Customer agrees to pay on demand all collection costs and solicitors fees, charges and/or costs and enforcement costs incurred or expended in recovering monies due and payable by the Customer to Clark Drainage Limited; and (e) exercise any and all remedies afforded to a secured party by Part 9 of the Personal Properties Securities Act 1999 and enter any building or premises owned, occupied or used by the Customer to search for or re- take possession of the Goods and use or dispose of them for Clark Drainage Limited's own benefit.

#### **Variations**

Variations to the Goods and Services must be agreed in writing or verbally and will be invoiced within 7 days in which they are carried out and Payment is due as per the payment terms above. Further to this the customer agrees to any additional work (including payment as per the terms stated above) that may arise from the original agreed to job, including but is not limited to; a situation where Clark Drainage Limited may find their equipment lodged in any section of the customers drainage system because of work that has been requested by the customer. Clark Drainage Limited must have a verbal discussion with the customer before undertaking any action to dislodge the equipment and the best course of action to take.

#### **Disputes**

In the event that any part of an invoice is disputed, the amount not in dispute must be paid as per the payment terms above. Thereafter the parties agree to use their best endeavours to promptly resolve any dispute between them. The Customer must advise Clark Drainage Limited of any dispute relating to their invoice within 7 days of receiving the invoice.

#### **Costs**

The Customer must pay Clark Drainage Limited costs (including debt collection and legal costs (as between solicitor and client) on a full indemnity basis) of and incidental to the enforcement or attempted enforcement of Clark Drainage Limited's rights, remedies and powers under these Terms and Conditions

#### **Warranties**

Clark Drainage Limited shall guarantee the workmanship undertaken for the Customer as per the New Zealand Building Code G13, E1, B2, AS3500

#### **Limitation of Liability**

Notwithstanding any damages that the customer might incur, the entire liability of the Company and any of its suppliers under any provision of this Terms and the customers exclusive remedy for all of the foregoing shall be limited to the amount actually paid by the Customer through the Services provided. To the maximum extent

permitted by applicable law, in no event shall the Company or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, loss of data or other information, for business interruption, for personal injury, loss of privacy or otherwise in connection with any provision of this Terms), even if the Company or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose.

#### **Severability**

If any provision of these Terms is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect

#### **Changes to These Terms and Conditions**

We reserve the right, at Our sole discretion, to modify or replace these Terms at any time without notice to the customer. What constitutes a material change will be determined at Our sole discretion. By continuing to use Our Services after those revisions become effective, The Customer agrees to be bound by the revised terms. New Terms and Conditions will be enforceable by Clark Drainage Limited from the date they were provided to the Customer. The New Customer Registration Form, the Quote or Contract (as applicable) and these Terms and Conditions are the entire agreement between Clark Drainage Limited, the Customer and the Guarantor, and supersede all representations, agreements or other communications made by Clark Drainage Limited. If any part of these Terms and Conditions is illegal, unenforceable, or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms and Conditions are not affected. The Customer may not transfer or assign any of its rights or liabilities under the Terms and Conditions to any other person without the prior written consent of Clark Drainage Limited. Nothing in these Terms and Conditions will constitute any party as the partner, agent, employee or officer of any other party and no party will make any contrary representation to any other person. No waiver of any breach, or failure to enforce any provision of these Terms and Conditions at any time by any party will in any way limit or waive the right of that party to subsequently require strict compliance with these Terms and Conditions. These Terms and Conditions are governed by New Zealand law and the parties submit to the exclusive jurisdiction of the Courts of New Zealand in respect of all matters relating to the Terms and Conditions

#### **Contact Us**

If The Customer have any questions about these Terms and Conditions, The Customer can contact us by email: [clarkdrainage@outlook.com](mailto:clarkdrainage@outlook.com)