

1. The following terms shall be incorporated into every contract between Abseil Access Limited ("Abseil Access") and the customer for the supply by Abseil Access of goods or services unless specifically excluded in writing and annexed hereto. No variation of these terms will be binding upon Abseil Access unless made in writing. In the event of inconsistency between these terms or any quotation or other agreement entered into between Abseil Access and the customer, then these terms shall take precedence at all times.
2. **DEFINITIONS**

"Abseil Access" means Abseil Access Limited its agents or subsidiaries.  
"Customer" means the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods and/or services from Abseil Access.  
"Latent Condition" means any physical condition on or below or within the site, or the area surrounding the site, which differs materially from the physical conditions which could reasonably have been expected by Abseil Access at the time its quotation or estimate or schedule of prices are agreed.  
"Substantial Completion" means when the Works or a stage of the Works is 95% complete.  
"Works" means the work that Abseil Access is to carry out in accordance with its quotation or any agreed contract documents, including variations and any design work carried out by Abseil Access.
3. **ABSEIL ACCESS'S WARRANTIES**
  - 3.1 Abseil Access warrants that the Works it is responsible for will be carried out:
    - a. In a proper and competent manner;
    - b. With reasonable care and skill;
    - c. In accordance with any building consents;
    - d. Using materials that are fit for purpose;
    - e. Using materials that are new (unless agreed otherwise); and
    - f. In accordance with all applicable laws and legal requirements.
4. **INSURANCE**
  - 4.1 Abseil Access will effect and maintain a public liability insurance policy for an amount of not less than one million dollars. The policy will be kept continuously in force until any work required to remedy defects has been completed.
  - 4.2 If the Works are new construction or involve the alteration, addition or repair of an existing building, the Customer must effect and maintain a policy of insurance for contract works insurance.
  - 4.3 Where requested in writing by the other party, a party liable to insure must provide satisfactory evidence as to the existence, maintenance and terms of any insurance policy.
5. **VARIATIONS**
  - 5.1 The Customer may order any variation to the Works that:
    - a. increases or decreases the scope of the Works;
    - b. omits any work; or
    - c. changes the nature, position, location, or quality of any work or materials.
  - 5.2 Abseil Access may claim a variation for any Latent Condition for any increase in the works including, without limitation, any extra drilling required beyond any estimated/specified depth to reach rock that is capable of supporting/holding the specified anchoring system(s).
  - 5.3 The Customer shall not, without the consent of Abseil Access, remove work from the Works to have that work carried out by another contractor or the Customer.
  - 5.4 The contract sum or quotation price is to be adjusted by the price of a variation and the adjustment is to be included by Abseil Access in its next payment claim.
  - 5.5 Wherever practicable, the value of any variation shall be agreed before the work is commenced, however any failure to do so will not invalidate the variation or Abseil Access's entitlement to be paid the reasonable value of the variation.
  - 5.6 If the Works or a part of the Works are being carried out on a measure and value basis:
    - a. then the price will be calculated according to the measured quantity, as determined by the appointed contract administrator (or Abseil Access if no contract administrator has been appointed), of each item of work carried out at the rates set out in Abseil Access's schedule of prices; and
    - b. if an item of work has been omitted by error from Abseil Access's schedule of prices, the work omitted shall be treated as a variation.
6. **PAYMENT**
  - 6.1 Abseil Access may serve on the Customer a payment claim by email or post in respect of:
    - c. a deposit; and/or
    - d. in respect of any costs and expenses incurred by Abseil Access in making an application for, and/or uplifting any consents in relation to the Works and any costs of professional advice, reports, plans, and drawings as may be necessary in the circumstances; and/or
    - e. on Substantial Completion of the Works; or
      - a. on Substantial Completion of any stages of the Works, if the Works have been separated into stages; or
      - b. by way of progress claims during each monthly period commencing on the day of the month in which the Works were first carried out and ending on the last day of that month, and each month after that first period.
  - 6.2 The due date for payment of a payment claim is seven (7) calendar days after the relevant payment claim is served on the Customer ("the Due Date").
  - 6.3 If the Customer intends to pay Abseil Access less than the amount claimed in a payment claim, then the Customer must respond to the payment claim by providing a payment schedule to Abseil Access within five (5) calendar days after the date the payment claim is received.
  - 6.4 Any payment schedule issued by the Customer must comply with the requirements of the Construction Contracts Act 2002.

**7. DEFAULT**

- 7.1 If the customer does not make payment on the Due Date, the Customer shall be liable to pay:
- a. default interest at the rate of 2% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and
  - b. any legal costs on a solicitor/client basis that Abseil Access incurs incidental to the enforcement or attempted enforcement of its rights, remedies and powers under these Terms of Trade.
- 7.2 If at any time Abseil Access agrees that any outstanding account may be paid off over time, it is strictly on the basis that should any payment be missed, then the full balance owing as at the date that payment is missed becomes due and owing immediately and Abseil Access may pursue the Customer for the full outstanding amount notwithstanding the agreement for time payment.
- 7.3 Any amount claimed by Abseil Access for any goods whether such goods are invoiced/claimed separately or within a payment claim for both goods and services must be paid in full without set-off, deduction or abatement.
- 7.4 If the Customer fails to pay any amount owing on the Due Date and any such default continues for five (5) calendar days then:
- a. Abseil Access shall be entitled to immediately suspend the Works without notice and such suspension shall be on the same basis as if it were a suspension under s24A(2) and (3) of the Construction Contracts Act 2002; and/or
  - b. Abseil Access may by written notice to the customer, cancel the contract and any rights exercised by Abseil Access pursuant to this clause shall not terminate the Customer's liabilities under the contract, or to pay damages for any breach of it.

**8. QUOTATION PRICE**

- 8.1 Where a quotation is given by Abseil Access for goods and services:
- a. The quotation shall be valid for thirty (30) days from the date of issue.
  - b. Abseil Access reserves the right to alter the quotation where the quotation has been submitted based on plans or has been based upon work and/or quantities in an area that cannot be viewed until the work is undertaken and/or a Latent Condition exists or circumstances exist beyond the control of Abseil Access on identification of which the quotation may be reviewed and altered at Abseil Access's discretion. Notwithstanding that any quotation has stated that it is a quotation then in the circumstances set out in this clause, it shall be read as an estimate only.

**9. RETURN OF GOODS**

- 9.1 The Customer may not return or refuse delivery of any goods purchased from Abseil Access unless agreed to in writing by Abseil Access

**10. TITLE**

- 10.1 The Customer gives irrevocable authority to Abseil Access to enter any premises occupied by the Customer, at any reasonable time, to remove any goods not paid for in full by the Customer. Abseil Access shall not be liable for costs, damages for expenses or any other losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

**11. DEFECTS LIABILITY PERIOD**

- 11.1 The Customer must notify Abseil Access of any defect in writing as soon as reasonably possible after the defect becomes apparent.
- 11.2 Abseil Access must, at its own cost, rectify any part of the Works that is agreed by both parties to be faulty or defective and our responsibility of Abseil Access, and remove and replace any materials not in accordance with our quotation or any contract documentation as directed in writing by the customer for a period of 12 months from the date of Substantial Completion of the Works.
- 11.3 The Customer shall give Abseil Access all necessary and reasonable access to enable Abseil Access to remedy any defect and/or replace any materials during the 12 month period from the date of Practical Completion.
- 11.4 These defect provisions do not mitigate or absolve the Customer's responsibility for maintenance.

**12. LIMITATION OF LIABILITY**

- 12.1 In respect of the supply of goods, Abseil Access's liability under these Terms of Trade or any contract collateral hereto is strictly limited to replacing (or at the election of Abseil Access repairing) any defective goods to the entire exclusion of any other remedy which, but for this clause, the Customer might have.
- 12.2 In respect of the supply of services, the Customer acknowledges that:
- a. Abseil Access will not be liable to the customer for any claim for alternative accommodation, disruption, inconvenience, removal/storage of furniture, loss of opportunity, loss of data, loss of revenue, loss of profit or anticipated profit, direct or indirect consequential losses whether arising in contract, negligence or otherwise at law; and
  - b. Abseil Access's liability for any direct losses or any other losses not included in clause 12.2 (a) shall be limited to the amount of Abseil Access's contract sum or quotation value for the Works and as adjusted by any variations.

**13. PPSA**

- 13.1 The Customer acknowledges that it grants a security interest (as defined in the Personal Property Securities Act 1999 ("PPSA")) in all present and after acquired property as security for its obligations to Abseil Access. The Customer must do all things including executing all documents that Abseil Access requires to provide Abseil Access with a first ranking security interest in the goods.
- 13.2 The Customer waives the right to receive a copy of the verification stated under the PPSA and agrees it will have none of the rights under ss114(1Xa), 116, 117(1Xc), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA. Where Abseil Access has rights in addition to those in Parts 9 of the PPSA, the Customer agrees that those rights shall continue to apply and in particular will not be limited by s109 of the PPSA.
- 13.3 The Customer agrees to indemnify Abseil Access for any costs Abseil Access incurs in registering, maintaining and for enforcing the security interest created by these terms including actual legal costs on a solicitor/client basis.
- 13.4 The Customer must immediately notify Abseil Access if it changes its name, registered office or place of business.

**14. CONSUMER GUARANTEES ACT**

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods or services

from Abseil Access for the purposes of a business in terms of section 2 and 43 of that Act.

15. MISCELLANEOUS

- 15.1 The Customer shall not assign all or any of its rights or obligations under these terms without the written consent of Abseil Access.
- 15.2 Abseil Access shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.3 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by these terms.
- 15.4 If any provision of these terms shall be invalid void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.5 Unless otherwise agreed in writing, Abseil Access is not responsible for obtaining a Code Compliance Certificate and Abseil Access is entitled to issue its final payment claim for payment irrespective of whether a Code of Compliance Certificate has or has not been issued.