

N W Aitken Ltd T/A Metrocoat - Terms and Conditions of Trade

1. DEFINITIONS

1.1 Metrocoat shall mean N W Aitken Ltd T/A Metrocoat Painting and its successors and assigns.

1.2 "Customer" shall mean the Customer and any person acting on behalf of and with the authority of the Customer.

- 1.3 "Goods" shall have the same meaning as section 2 of the Contract and Commercial Law Act 2017 are the Goods supplied by MC to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).

1.4 "Services" shall mean all services supplied by MC to the Customer and includes any advice on recommendations.

1.5 "Price" shall mean the cost of the Services as agreed between MC and Customer subject to clause 4 of this contract.

2. ACCEPTANCE

2.1 Any instructions received by MC from the Customer for the supply of Services shall constitute acceptance of the Terms and Conditions contained herein.

2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these Terms and Conditions by the Customer the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with the written consent of the manager of MC.

2.4 None of its agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of MC in writing nor is MC bound by any such unauthorised statements.

3. GOODS AND/OR SERVICES

3.1 The Goods and/or Services are as described on the invoices, quotation, estimate, work authorization or any other work commencement forms as provided by MC to the Customer.

4. PRICE and PAYMENT

4.1 At MC's sole discretion the Price shall be either;

(a) The Price shall be as indicated on invoices provided by MC to the Customer in respect of Services supplied; or

(b) The Price of the Services shall, subject to clause be MCs quote/estimate Price, which shall be binding upon MC provided that the Customer shall accept in writing MCs quotation within 30 days.

4.2 Any variation from the plan of scheduled work or specification will be charged for, on the basis of MCs quotation/estimate and will be shown as extras on the invoice. Payment for extras must be made in full at the time of completion.

4.3 At MCs sole discretion a deposit may be required. The deposit amount or percentage of the price will be stipulated at the time of order of the Goods/Services and shall become immediately due and payable.

4.4 At MCs sole discretion, payment for approved Customers shall be due on 20th of each month following the date of an invoice/ statement posted to the Customers address or addresses for notices.

4.5 At MCs sole discretion for certain approved Customer's payment will be due 1 (one) day following the date of invoice/statement.

4.6 Payment will be made by cash, cheque, bank cheque or direct credit, or any other method as agreed to between MC and the Customer.

4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may

be applicable except to the extent that such taxes are expressly included in any quotation/estimate given by MC.

5. DELIVERY OF GOODS AND/OR SERVICES

5.1 Delivery of the Services shall be made to the Customers address.

5.2 The failure of MC to deliver shall not entitle either party to treat this contract as repudiated.

5.3 The Seller shall not be liable for any loss or damage whatsoever due to failure by MC to deliver the Services (or any of them) promptly or at all.

6 DEFAULT & CONSEQUENCES OF DEFAULT

6.1 If the Customer defaults on payment of any invoice when due, the Customer shall indemnify MC from and against all of MC's costs and disbursements including on a solicitor and own client basis and in addition all of MCs nominees' cost of collection.

6.2 Interest on overdue invoices shall accrue from the date when payment becomes due and daily until the date of payment at the rate of 8%compounding per calendar month and shall accrue at such a rate after as well as before any judgement.

7. DEFECTS

7.1 The Customer shall inspect the Services and shall within two (2) days of delivery notify MC of any alleged defects, damage, or failure to comply with the description or quote. The Customer shall afford MC the opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions the Services shall conclusively presumed to be in accordance with the Terms and Conditions and free from any defect or damage.

8. WARRANTY

8.1 MC guarantees that all work undertaken is to an industry accepted standard of best practice and all such work is warranted against failure due to poor workmanship.

8.2 MC will make all reasonable efforts to advise Customers of potential issues that could affect

the work, this includes but is not limited to the water tightness and safety of fittings, windows, flashings, and other fixtures.

(a)This includes but is not limited to the quality of all paint and/or other coatings

8.3 MC will make every reasonable effort to retain the existing paint surface but has no liability for lifting of paint from the substrate, due to the effects of weathering and ageing to painted surfaces.

8.4 Notwithstanding Clause 8.2, in the event that MC's operators find that the process is causing damage, they are entitled to cease work and seek advice from the Customer, any decision made by MC's operators to cease work is binding on the Customer and the Customer will not claim damages.

9. CUSTOMER SUPPLIED INFORMATION

9.1 From time-to-time MC may agree to undertake work based on a description of the site conditions supplied by the Customer and without a prior inspection by MC.

9.2 The Customer agrees that in the event MC is required to do additional work to complete the work based on actual site conditions, the Customer agrees to pay any additional charges determined by the time and materials used and recorded by MC

10. ELECTRICAL

10.1 The Customer is required to ensure that all electrical fittings on site and included in the work areas are isolated against water damage. All such fittings or associated electrical components such as alarms or automated controls must comply with current electrical safety standards or legislative requirements and be of sufficient waterproofing standard to withstand the ordinary use of a water-based Painting process.

10.2 MC has no liability for losses or damage caused through water ingress to the fittings or fixtures as described in 10.1.

10.3 If any requested remedial work cannot be completed prior to the work, then the Customer will arrange for the mains power to the site be disconnected for the duration of the Service and bear the associated costs.

11. ACCESS

11.1 The Customer must ensure that unobstructed access to the specific work location is available for MC at the scheduled time for the work to be performed, this includes but is not limited to vehicle access, removal of deck and open space furniture, sculptures, and any other items of sentimental or other value.

11.2 If the Customer fails to ensure clear access, then MC may at their sole discretion charge waiting and/or rescheduling fees.

11.3 If the Customer provides temporary access such as scaffolding, mobile towers or similar, such access must comply with all Health & Safety at work Act 2015 or any other legislative requirements.

11.4 Where the Customer is unable to clear the work area, MC may at its sole discretion agree to perform the required work. Such work will be charged for as an extra and will be charged accordingly.

12. WATER SUPPLY

12.1 The Customer must ensure that MC has access to a supply of potable water that meets the requirements of volume and quality.

12.2 If the Customer cannot meet that requirement, MC may import water specifically for the work and charge the costs associated as a variation.

13. VARIATIONS

13.1 All on site variation requests are to be communicated to the Directors or their nominated Employee.

MC may at their sole discretion agree to the work being undertaken immediately.

13.2 If MC agrees to perform the additional work and have no reasonable opportunity to inspect the work then the Customer agrees that the price for the variation will be based on the time taken to do the work plus materials.

13.3 The determinant for the time and material cost will be the time recorded by MC from the daily logs, timesheets, or verbal advice from their employee.

14. CANCELLATION

14.1 MC may cancel these Terms and Conditions or cancel delivery of the Services at any time

before they are delivered by giving written notice. MC shall not be liable for any loss or damage arising from such cancellation.

14.2 At MCs sole discretion the Customer may cancel delivery of the Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services less than 48 hours prior to the commencement of the work, the Customer shall be liable for 75% of the accepted quoted cost by MC.

15. PRIVACY ACT 2020

15.1 The Customer and the Guarantors (if separate to the Customer) authorises MC to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing any Services and services provided by MC to any other party.

15.2 The Customer authorises MC to disclose any information obtained to any person for the purpose set out in clause 15.1

15.3 Where the Customer is a natural person the authorities under (clause 15.1 and 15.2) are authorities or consents for the purpose of the Privacy Act 2020.

16. CUSTOMERS DISCLAIMER

16.1 The Customer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to them by any servant or agent of MC and the Customer acknowledges that they buy the Services relying solely on their own skill and judgement and that MC shall not be bound by nor responsible for any term, condition, representation, or warranty other than the warranty given by MC which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

17. CONTRACTUAL REMEDIES ACT

17.1 The provisions of the Contract and Commercial Law Act 2017 shall apply to this contract. section 345 (1)(i).

18. CONSUMER GUARANTEES ACT 1993

18.1 This agreement is subject, in all cases except where the Customer is contracting within the Terms and Conditions of a trade/business (which cases are specifically excluded) to the provisions of the Consumer Guarantees Act 1993.

19. GENERAL

19.1 All Goods and Services supplied by MC are Subject to the laws of New Zealand and that MC takes no responsibility for changes in the Law that affect the Goods and Services supplied.

19.2 If any provision of these Terms and Conditions shall be invalid, void, or illegal or unenforceable the validity existence, legality, and enforceability of the remaining provisions shall not be affected or prejudiced or impaired.

19.3 MC shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by MC of these Terms and Conditions.

19.4 In the event of any breach of this contract by MC the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of MC exceed the price of the Goods and or Services.

19.5 The Customer shall not set off against the Price amounts due from MC.

19.6 Neither party shall be liable for any default due to any act of God, terrorism, war, earthquake strike, lock out, industrial action, flood, storm, or other event beyond the reasonable control of either party.

19.7 MC may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

19.8 MC shall not be liable for errors or omissions arising from oversight or a misinterpretation of the Customers verbal instruction.

19.9 MC reserves the right to review these Terms and Conditions at and time and from time to time. If following any such review, there is to be any change in the Terms and Conditions

that change will take effect from the date on which MC notifies the Customer of such change.