

TERMS AND CONDITIONS of DESIGNER GATES



1. SCOPE OF THE AGREEMENT

1.1 Subject to the terms and conditions of this Agreement:

- (a) the Contractor undertakes to carry out the works agreed to in quote or writing; and
- (b) the Client undertakes to accept and pay for the works completed.

2. CONTRACTOR'S RESPONSIBILITIES

2.1 The Contractor shall provide the labour, materials, transport and such other components specified in, or to be reasonably inferred from, the Contract Documents, necessary to the carrying out of the agreed works.

2.2 All materials placed on the Site by the Contractor and not incorporated within construction of the works shall remain the Contractor's property. Upon completion of Works, the Contractor will remove all such materials together with any rubbish and debris associated with or caused by the Landscaping Works unless otherwise stated.

3. CLIENT'S RESPONSIBILITIES

3.1 The Client warrants that:

- (a) the Client is the owner of the Site or is authorised by the owner of the Site to carry out the Works;
- (b) the Client has all necessary third party (such as mortgagees or tenants) consents for the completion of the Works;
- (c) the Contractor shall have free and unimpeded access to the Site for the purpose of carrying out the Works from the Commencement Date; and
- (d) (except where agreed otherwise) the Site is or will be level and cleared of all debris prior to the Commencement Date.

3.2 The Client shall be responsible for obtaining any necessary resource or building consents for the Works, unless specified otherwise in writing by the Contractor.

3.3 The Client acknowledges that if:

- (a) the Contractor is not given access or the Site is not level or clear of debris by the Commencement Date;
- (b) any necessary resource or building consents for the Works are not granted by the Commencement Date; and/or
- (c) other contractors either interfere with the Contractor's performance under this Agreement or cause alterations or damage to the Works,

then the Contractor shall be entitled to a reasonable extension of time to complete the Works and/or to charge additional costs, having regard to the loss of time, interference or other costs or damage suffered.

3.4 The Contractor may erect signage at appropriate locations on the Site advertising its involvement in the carrying out of the Works. Such signage must be of a professional standard and the size and in a location approved by the Client, such approval not to be unreasonably withheld.

3.5 The Client must inspect all Works upon completion and notify the Contractor in writing of any concerns with the workmanship provided or defects/damage, within 3 business days of completion. If no notification is received, the Contractor will deem the Works to have been inspected and of acceptable quality, free from defect or damage.

3.6 If the Client finds fault with the workmanship or finds defect/damage, the Client must allow the Seller to be first to inspect the Works or to review the Services provided. In the event where the Client fails to comply with the right to the Seller to have first refusal to inspect any alleged claim and engages another third party to rectify, this will void any warranty previously offered.

4. CONTRACT SUM AND PAYMENT

4.1 The Client shall pay to the Contractor the Invoiced Sum in the manner, at the rate and at the times provided.

4.2 The Contract Sum may be adjusted in accordance with clauses 5.1 or 8.1.

4.3 The Client shall pay a deposit of **50% of the Quoted Sum** on the acceptance of this Agreement. This secures your place in our workflow. Until this payment is made, you have not accepted the quote and no work or purchasing of materials will occur. Delay in payment of the deposit will delay the commencement and completion of the Works.

4.4 For Works that continue over more than one month the Contractor will invoice the Client mid month and end of month and upon completion (or as determined by the Contractor at its sole discretion) for amounts due under clause 4.1.

4.5 The Client shall pay the Contractor the amounts due under each invoice within 3 Business Days.

4.6 All payments must be made without deduction, withholding or set off.

4.7 Once the contractor has completed works and deems these to be satisfactory, payment of the balance invoiced is required to be paid. The client can not retain partial payment for any reason. Workmanship or warranty queries will be discussed and the processes in Section 11 will be followed only after the balance of invoice has been paid.

4.8 When goods are being collected from the contractor, payment is required to have cleared into the Contractors bank account before goods will be provided. Payment receipt will not be sufficient.

4.9 Trade accounts are payable 14 days following invoice. Trade accounts are only granted at the discretion of the contractor and may be discontinued at any time at the contractors discretion. The due date will be noted at the top of all invoices. The contractor is not required to send a monthly statement.

4.10 Where any money owing under this Agreement is not paid by the due date, the Client shall pay:

- (a) Default interest on the amount outstanding calculated at 5% per week, and shall accrue until final payment is made.
- (b) All expenses, including collection costs from obtaining the services of a debt collection company and/or legal fees in relation to any overdue amount will be added to your account and you as the customer are liable for its payment.

(c) Collection costs will be calculated with the default interest included.

4.11 All materials supplied by the Contractor including materials incorporated into the Works shall remain the property of the Contractor until the Invoiced Sum has been paid in full. The Contractor may enter the Site to dismantle and remove all Works and associated materials if payment is not made in accordance with this Agreement. See further in **action 13 labeled "TITLE"**.

4.12 If the Contractor for the purposes of the Works arranges or procures materials from a subcontractor or any other third party and the terms of the arrangements between the Contractor and the subcontractor or third party require payment by the Contractor, then the Contractor shall be entitled to request payment forthwith by the Client regardless of whether the work or materials are yet located on the Site.

4.13 All prices referred to in this Agreement are stated inclusive of GST. GST shall be payable at the then current rate applicable at the time of supply under the GST Act on each invoice and at the same time as the invoiced amount is due.

5. UNFORESEEN DIFFICULTIES

5.1 Where the Contractor encounters unforeseen difficulties in respect of the Site, including such matters as hidden rock, underground services, fill or toxic materials (which could not previously have been detected by the Contractor by a visual inspection of the Site), the Contractor shall immediately consult the Client and:

- (a) the parties may negotiate to determine the extent of the additional work and/or time required, and any resulting variation to the Agreement; and
- (b) until agreement under clause 5.1(a) is reached, either party may immediately terminate the Agreement in accordance with clause 8.4.
- (c) Where a utility is not indicated or is not substantially in the position indicated by the Client, any extra work in physically locating its position or altering or protecting or offsetting or reinstating it shall be paid for by the Client.

5.2 The Contractor shall take no responsibility for the health of plants or trees in the vicinity of Works completed. Where possible any issues with plants being near Works completed will be discussed with the client and all care will be taken to protect any in the area but no guarantee for them will be made.

6. SITE SECURITY AND INSURANCE

6.1 The Contractor shall maintain public liability insurance for an appropriate sum.

6.2 The Client shall be responsible for security of the Site and all completed Works at all times outside the hours during which the Contractor is present on the Site. If the Client requires the Contractor to provide security, stock and/or pest proof fencing, the Contractor shall pass on the cost of this to the Client.

6.3 The Contractor's liability under this Agreement shall not exceed the Contract Sum. The Contractor shall not be liable for any indirect or consequential damage or loss.

7. ACCEPTANCE

7.1 Acceptance is defined as any written communication from the customer to the contractor stating they accept the quote and its terms & conditions contained here in. Examples of this, but not limited to, are "go ahead please", "can we get this started", "I'd like to accept" and "please proceed".

7.2 Any instructions received by the contractor from the customer for the supply of goods and services, shall constitute acceptance of the quote and its terms & conditions contained here in.

7.3 Quotes are valid for 14 days from the date written on the quote. This may be extended at the contractors discretion.

8. Variation

8.1 Any variation in the quantity or specification of Goods and Services requested by the customer after the date of the quotation, shall be at the customer's expense.

9. TERMINATION

9.1 An event of default under these terms occurs if:

- (a) the Client fails to pay the Contractor any amounts owing within 20 Business Days of the due date for payment;
- (b) either party breaches its obligations under these terms and, where that breach is capable of remedy, fail to remedy it within 5 Business Days of becoming aware of it; or
- (c) either party becomes insolvent, bankrupt or unable to pay its debts as they fall due,
- (d) if the Contractor deems that the working relationship between the Client and Contractor to have become broken beyond repair, the Contractor may terminate this agreement by giving written notice to the Client. The Contractor shall not be liable for any loss or damage arising from such cancellation and may seek reimbursement under clause 8.4 of this agreement.

8.2 If the Contractor commits an event of default, the Client may terminate the Agreement without prejudice to either party's rights and remedies under this Agreement.

8.3 If the Client commits an event of default, the Contractor may, without prejudice to any other rights the Contractor may have, take any or all of the following actions:

- (a) suspend the carrying out of Works until further notice;
- (b) require the Client to pay the costs of remedying any breach of this Agreement;
- (c) terminate this Agreement without prejudice to either party's rights and remedies under this Agreement; and/or
- (d) require the Client to pay all costs and expenses incurred as a consequence of termination or suspension.

8.4 If this Agreement is terminated prior to its full completion, including without limitation under clauses 5.1(b) or 7 then, in addition to any payments due and owing by the Client to the Contractor in terms of those provisions, the Client shall also reimburse the Contractor for:

- (a) any out of pocket expenses or advance payments made by the Contractor for goods or services to third parties which are in respect of the Works carried out or to be carried out; and
- (b) any of the Contractor's own costs for planning, designing or administering the Works which have not been paid and which relate to either works already carried out or yet to be carried out.

9. Delivery of Goods and Services

9.1 Delivery shall be deemed to be completed upon receipt of the goods and services by the customer.

9.2 The time agreed for the completion of Services or the delivery of Goods shall not be an essential term of this contract.

10. CONSUMER GUARANTEES ACT

10.1 If the Client is a business, the Client is deemed to have acknowledged that the supply of goods and services under this Agreement is a supply for business purposes and that the Consumer Guarantees Act 1993 shall not apply. Nothing in this Agreement is intended to limit the rights of a consumer under the Consumer Guarantees Act 1993.

11. Warranty

11.1 The Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of Installation or Delivery then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.

11.2 The conditions applicable to the warranty given by clause 11.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines detailed in the Client care manual provided by the Seller; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

11.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

11.4 Any concerns in relation to the motor of an automatic gate, will lead to the customer notifying the contractor in writing within 24 calendar months from completion. Beyond this period will incur call out costs and any repairs, parts or costs in relation to the call out to be charged to the customer. Batteries and remotes carry 6 months warranty.

11.5 Whilst we do our best to provide quality timber, timber is a living object and does warp, twist, move, split and change colour over time and the contractor does not take responsibility for this. **We strongly advise that customers stain or paint any wood** immediately to reduce timber movements and provide protection. (Black paint/stain can increase the risk of movement.)

11.6 All steel used, unless specified, is Duragal coated and all welds are sprayed with Zinc to protect the raw steel.

11.7 Powder Coating, if paid for by the customer, forms no part of the protective layer and is purely decorative. Any visible 'black' steel is to be reported to the contractor as per section 3.5, where the contractor will provide touch ups. **We strongly advise customers to provide regular maintenance to their steel by purchasing zinc spray/spray paint from their local hardware store and spray any chips or blemishes** to ensure that they are protected from the elements.

11.8 It is recommended by the supplier to have all automation parts maintained and serviced yearly. A service we are happy to quote for. Lack of yearly servicing by an authorised installer such as Designer Gates may void warranty.

11.9 This warranty does not cover:

- (a) Damage incurred in shipping or handling - once dropped at or picked up by any depot, freight company, courier etc, all responsibility is transferred to the customer and/or their chosen freight/courier company.
- (b) Removal of structures/greenery etc already in place unless clearly stipulated in the quote.
- (c) Damage caused by natural or manmade disasters such as fire, flood, wind, earthquake, or lightning etc
- (d) Damage due to causes beyond the control of Designer Gates such as excessive voltage or short circuiting, mechanical shock or water damage.
- (e) Damage caused by unauthorized attachment, alterations, modifications, or foreign objects.
- (f) Damage caused by peripherals (unless such peripherals were supplied by Designer Gates)
- (g) Damage by moisture, insects or animals or objects such as vehicles etc.
- (h) Defects caused by failure to provide a suitable installation environment for the products.
- (i) Damage caused by use of the products for purposes other than those for which it was designed.
- (j) Damage from improper maintenance.

(k) Damage arising out of any other abuse, mishandling, and improper application of the products.
11.10 Out of warranty repairs may be completed by the contractor, where applicable, but will incur charges for labour and materials.

11.12 Where there are wireless signals, these may not reach the receiver under all circumstances which could include metal objects placed on or near the radio path, nearby electric fences, deliberate jamming or other inadvertent radio signal interference. This may cause disturbances or signal failures. All possible interferences must be kept out of the path of the signal to maintain a high signal and thus reliable usability.

12. Privacy Act

12.1 The customer permits the contractor to collect, use and retain information concerning the customer, for the purpose of assessing the customer's credit worthiness or to enforce any rights under this contract.

12.2 The customer permits the contractor to disclose information obtained to any person for the purposes set out in 6.1

12.3 Without disclosing the Client's full name or the Site's full address, the Contractor may publish any designs, photographs or other images in respect of the Works.

13. Title

13.1 The Supplier retains legal and equitable title to any Goods supplied to the customer or Works completed until full payment is made to the Contractor (even if the customer incorporates the Goods with other items or the Goods become part of or an accession or accessory to any other objects, products or mass).

13.2 The Customer gives irrevocable authority to the Contractor to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. Designer Gates shall not be liable for any costs, damages, expenses or 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 unless by statute such liability cannot be excluded. Designer Gates may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as Designer Gates reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

13.3 Where Goods and Services are retained by Designer Gates pursuant to clause 7.2 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

10. INTERPRETATION

Definitions:

"Contractor" or "Supplier" means Designer Gates.

"Customer" or "Client" means the person, authorised agent or legal entity described in the application, or stated on the invoice or order form/quote, buying services from Designer Gates.

"Goods and Services" shall mean all Goods and Services supplied by the contractor to the customer and includes any recommendations and advice.

"In writing" shall mean in email, or in written/printed hard copy.

"Business Day" means a day on which banks are open for business in Christchurch.

"Commencement Date" means the date on which the Client will provide access to the Site.

"GST" means the goods and services tax applicable under the Goods and Services Tax Act 1985 ("GST Act").

"Works" means all the work to be executed by the Contractor.

"Site" means the land, buildings or other places made available by the Client to the Contractor for the purpose of carrying out the Works.

By accepting this quote, you are deemed to have accepted the Terms and Condition

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