

# TERMS OF TRADE

## 1. Application of these Terms

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- 1.1 These terms apply to our current and future Services to you except to the extent we agree with you otherwise in writing. You will be deemed to have accepted these terms by continuing to request or receive Services from us.
- 1.2 We can amend these terms by writing to you or by placing new terms on our Website. Any amended or new terms will apply from the earlier of the date we write to you or put them on our Website.
- 1.3 The following definitions apply to these terms:
  - (a) **Charges** mean the charges and fees payable by the Customer for the Services.
  - (b) **Council, we, and us** means Southland Regional Council, trading as Environment Southland.
  - (c) **Customer or you** means the person receiving the Services.
  - (d) **Services** means the Services carried out by the Council at the Customer's request or where required by law. The Services include, but are not limited to, the services described in the schedule of fees and charges available on our Website.
  - (e) **Website** means [www.es.govt.nz](http://www.es.govt.nz).

## 2. Payment for our Services

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- 2.1 We may ask you to prepay Charges to us or pay a deposit, before commencing the Services.
- 2.2 We may issue interim invoices for the Services (at our option).
- 2.3 We will invoice you for the Charges plus GST (if any). Our invoices are payable in full on receipt.
- 2.4 We will make all reasonable efforts to ensure that the description of the Services and Charges shown on our Website and any publication are accurate and up-to-date. However, we will not be liable for any misdescription or inaccuracy and may make corrections at any time, subject to any requirement under s150 of the Local Government Act 2002 or any other applicable law.
- 2.5 All sums payable to us are payable in New Zealand dollars.
- 2.6 If a payment is not made by the 20<sup>th</sup> of the month following the date of our invoice, then without prejudice to our other rights we may:
  - (a) charge you for the collection costs we incur in the collection of any unpaid Charges, including legal costs on a solicitor/own client basis and any debt collection costs, such as any commission payable by us to any collection agency retained by us for such purpose; and
  - (b) suspend performing Services for you immediately or (where applicable) withhold issuing any consent, approval or certificate applied for under the Resource Management Act 1991 or the Building Act 2004 .
- 2.7 Unless the law requires otherwise, payments received from you will be allocated as follows:
  - (a) firstly, in payment of costs incurred by us under clause 2.6(a); and
  - (b) secondly, in payment of unpaid Charges.
- 2.8 We may set-off any amount that may be owing by us to you against payments due by you.

## 3. Your Obligations

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- 3.1 You warrant that all information you provide to the Council is true and correct.
- 3.2 To the maximum extent permitted by law, you indemnify us for any reasonably foreseeable costs (including legal costs on a solicitor/own client basis), damages, losses or expenses we incur, suffer or become liable for as a result of:
  - (a) the provision of incorrect information by you to us;
  - (b) any breach by you of these terms or any other terms relevant to the provision of the Services;
  - (c) your negligence; or
  - (d) any claim brought by a third party against us arising in relation to clauses 3.2(a) to 3.2(c).

For now  
& our future



#### **4. Limitation of Liability**

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- 4.1 We are not bound by, and have no liability for, any error, omission or misdescription on any invoice, order or application form, or other document or statement we issue.
- 4.2 We will not be liable for any delay or failure to perform our obligations under these terms where such delay or failure has arisen as the result of any event or circumstance beyond our reasonable control.
- 4.3 Subject to any statutory requirement to provide the Services within a specified time, any time stated by us for completion of the Services is approximate only and we will not be liable if, for any reason, we fail to complete the Services by any time stated.
- 4.4 If you are obtaining our Services for personal use, nothing in these terms limits any rights you have under the Consumer Guarantees Act 1993 to the extent they cannot be waived or limited.
- 4.5 If you are obtaining our Services for business purposes, the Consumer Guarantees Act will not apply.
- 4.6 To the maximum extent permitted by law and subject to clause 4.4, all warranties, conditions, guarantees, representations and conditions as to fitness or suitability for any purpose, tolerance to any conditions or otherwise, whether made expressly or implied by law, trade custom or otherwise, are expressly excluded.
- 4.7 To the maximum extent permitted by law and subject to clause 4.4:
  - (a) our total liability to you in connection with the Services will be limited, at our option, to:
    - i. re-supply of the Services; or
    - ii. a refund of any amount paid by you for the Services.
  - (b) we will not be liable to you for any indirect or consequential losses or damages, loss of business or loss of profits.
- 4.8 The limitations in this clause 4 apply to liability of all kinds, whether in contract, tort (including negligence), equity or otherwise.

#### **5. Notices**

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- 5.1 We may give notice to you in relation to the Services by personal delivery, post, email or SMS text message to the address provided by you for such communication.
- 5.2 Any notice or communication given by us will be deemed to have been received by you:
  - (a) at the time of delivery, if delivered by hand;
  - (b) five working days after mailing, if sent by ordinary post or courier;
  - (c) at the time of sending, if sent by email or SMS text message. The Council will retain evidence that sending has occurred.

#### **6. General Provisions**

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- 6.1 The rights and remedies set out in these terms are in addition to, and not in limitation of, any other rights and remedies under or relating to these terms (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.
- 6.2 You may not transfer or assign your rights or obligations under these terms.
- 6.3 If we do not exercise or enforce any right available to us under these terms, it does not in any way constitute a waiver of that right.
- 6.4 If any provision of these terms becomes or is held to be invalid, unenforceable or illegal for any reason, that provision will be severed from the remaining terms, which shall continue in full force and effect.
- 6.5 These terms and any other agreement we have with you are governed by New Zealand law and are subject to the exclusive jurisdiction of the New Zealand courts.