

Terms and Conditions of Trade

1. General

1.1 These Terms apply to all quotations, orders, and contracts for the provision of Goods and Services supplied by the Company to the Customer.

1.2 In these Terms:

“**Claims**” means all damages, losses, expenses and costs (including solicitor own client costs, debt collection costs and consequential losses) on a full indemnity basis;

“**Company**” means Spiral Drillers Civil Limited (NZBN. 9429034972786);

“**Company IP**” means all intellectual property owned or used by the Company, including patents, trademarks, copyrights, written instructions, drawings, plans, manuals and other information;

“**Contract**” means a contract made between the Company and the Customer for Goods and / Services following the confirmation of an Order governed by these Terms;

“**Customer**” means the person or entity purchasing Goods and/or Services from the Company;

“**Customer IP**” means any intellectual property owned, used, or supplied by the Customer to the Company, including any drawings, plans or specifications provided by the Customer to the Company;

“**Deposit**” means any amount to be determined at the sole discretion of the Company in its Quotation or, in the absence of a specific deposit amount in the Quotation, the amount in these Terms to be paid in advance of the Customer beginning the Goods and/or Services.

“**Event of Default**” means any of the following events: the Customer failing to make a payment to the Company when it is due; the Customer otherwise breaching or failing to comply with any of these Terms; the Customer commencing a proceeding under applicable bankruptcy law or other law for the relief of debtors, a petition being filed in relation to the Customer’s bankruptcy, insolvency, reorganisation (other than a voluntary reorganisation), winding-up, or composition or readjustment of debts, the Customer becomes insolvent or is unable to pay its debts as they become due;

“**Goods**” means all goods supplied by the Company to the Customer, including but not limited to materials, consumables, casings, and cages;

“**Includes**” means includes without implying any limitation, and including shall be interpreted in the same manner;

“**Order**” means an order for Goods or Services made by the Customer following the receipt of a Quotation;

“**PPSA**” means Personal Property Securities Act 1999;

“**Price**” means the price (excluding GST) that is set out in the Company’s price list at the time of an Order or the price that is set out in a Quotation (whichever is applicable) subject to amendment in accordance with clause 3.8;

“**Quotation**” means a written quotation provided by the Company to the Customer;

“**Services**” means all services contemplated by the Quotation or performed by the Company for the Customer as part of the scope of the Order;

“**Site**” means the worksite described in the Quotation and specified by the Customer;

“**Terms**” means these Terms and Conditions of Trade (as amended from time to time at the Company’s sole discretion).

“**Total Amount**” means the total cost of the Order, including Goods and Services and any variations issued or interest charged by the Company on its invoices provided to the Customer.

1.3 To the extent possible that it does not conflict with the text of these Terms and where relevant, these Terms incorporate the terms of The Standard Conditions Of Contract For Building And Civil Engineering Construction NZS 3910: 2023

2. Nature of these Terms

2.1 Unless agreed in writing by the Company, these Terms shall apply to all dealings between the Company and the Customer and take precedence over any other document provided by or sought to be relied upon by the Customer.

2.2 In the event of any conflict between an Order submitted by the Customer and the Company’s Quotation, then the Quotation and these Terms shall prevail.

2.3 The Company reserves the right to amend these Terms and Conditions at any time without notification.

3. Quotations, Orders, and Price

- 3.1 All Quotations will be provided in writing and, subject to clause 3.2, are valid for 30 days from the date of the Quotation or as otherwise provided on the Quotation.
- 3.2 The Company may withdraw any Quotation at any time prior to receiving the Customer's confirmed Order and, where applicable, payment of Deposit.
- 3.3 The Company bears no responsibility for any costs or expenses incurred as a result of any mistake in designs, specifications or instructions given by the Customer.
- 3.4 The Customer may make an Order by the following methods:
- a) Execution of the New Customer Account Application Form following the receipt of a Quotation;
 - b) Written acceptance via email correspondence to an authorised representative of the Company following the receipt of a Quotation; or,
 - c) Acceptance of the delivery of Goods or commencement of Services contemplated by a Quotation delivered to the Customer and requested by the Customer in writing.
- 3.5 Orders are not binding upon the Company until the Company confirms the Order in writing.
- 3.6 The Customer acknowledges that the Company will incur obligations and costs once an Order is confirmed. The Customer cannot cancel an Order once it has been confirmed unless permitted by the Company, at its sole discretion.
- 3.7 Prices for the Company's Goods and Services are in New Zealand dollars and exclude GST unless otherwise indicated. If prices are not in New Zealand dollars, this will be indicated in the quotation, and such prices will be subject to currency fluctuations.
- 3.8 The Customer may order additional Goods and Services after the Order has been confirmed. Such Goods and Services will be charged in addition to the prices contemplated in the original Quotation on a costs-incurred basis following the placement of an Order for the supply of Goods and/or Services by the Customer.

4. Variations and Costs

- 4.1 The Company, at its sole discretion, may adjust any price quoted from time to time to take account of variations in the cost to the Company of carrying out the whole or any part of the Order, including but not limited to the following situations:
- a) Delays in delivery or provision of all or any part of the Goods or Services, as a result of instructions or lack of prompt instructions from the Customer;
 - b) The Customer's inability or failure to fulfil the obligations under the contract or any action or inaction by the Customer;
 - c) Increases in the cost of labour, materials or other input costs;
 - d) Other circumstances beyond the Company's control;
 - e) Variations in the scope of the work required;
 - f) Variation in the cost to the Company of acquiring or providing the Goods or Services, directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, or any variation in currency exchange rates;
 - g) Variation in the rates of, or the cost of complying with all statutory, government or local government or governmental authority charges and obligations; or,
 - h) The correction of errors or omissions on the Company's part or any of the Company's representatives, and the Customer agrees to pay any such adjusted price.
- 4.2 The Company will be entitled to charge for and recover from the Customer on demand all costs or loss occasioned by:
- a) Failure by the Customer to collect, take, or permit delivery of the Goods or provision of the Services (as the case may be) as and when agreed to in the Order;
 - b) Delay or interruption in the installation of Goods or provision of Services caused or contributed to by an act or omission on the Customer's behalf; and,

These costs or losses include but are not limited to, storage, labour, transportation, and administration costs.

5. Payment

- 5.1 Unless otherwise agreed in writing, the Customer shall make all payments to the Company by the 10th day of the month following the date of the invoice issues by the Company to the Customer.
- 5.2 All payments must be made without set-off or deduction (whether by way of counterclaim or otherwise). The Company may apply payments received from the Customer to any transaction or invoice at its discretion.
- 5.3 If at any time the Company deems the credit of the Customer to be unsatisfactory (in the Company's absolute discretion), the Company may require the Customer to provide, at the Customer's cost, security for payment and/or the Company may suspend performance of its obligations under any Order until security is provided to its satisfaction.
- 5.4 A Deposit totalling 30% of the agreed Total Amount is due upon the placement of an Order by the Customer at the Company's sole discretion. Payment of the Deposit shall be deemed as acceptance of these Terms. If the Company does not receive the Deposit into its designated bank account within two business days of an Order being placed by the Customer, it reserves the right to cancel the Order.
- 5.5 Where a Customer has been requested to provide a Deposit, they also agreed to pay the remaining costs, including any variations, within seven (7) calendar days of the receipt of an invoice issued by the Company, unless otherwise agreed by the Company in writing.
- 5.6 If the Goods or Services to be provided require or include prefabricated components and/or goods supplied by a third party, then the Company may require the Customer to make a payment as indicated in the Quotation within seven (7) calendar days of the Customer placing the Order, or prior to the Services commencing/Goods being delivered (whichever occurs soonest).
- 5.7 If the Customer owes the Company any money, the Customer shall indemnify the Company from and against all Claims, costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, any and all debt collection agency costs, and bank dishonour fees).

6. Late Payment

- 6.1 The Company may charge compound or fixed interest, determined at its sole discretion, on any monies outstanding under these Terms on a daily basis at a rate equal to 8% per month.
- 6.2 Interest may accrue on any amounts owing and will be charged from the date payment was due until the date the Company receives payment in full.
- 6.3 The right of the Company to charge interest is without prejudice to its other rights or remedies for the Customer's late payment, and the Company may suspend the performance of any of its obligations until payment is made in full.

7. Delivery and Performance

- 7.1 The Company will deliver the Goods (where applicable) via the method of transportation and carrier as the Company deems appropriate for the conditions of the Site. The Customer shall ensure that it or an employee or agent is available to accept delivery, where requested by the Company.
- 7.2 The Company will perform the Services solely at the Site unless otherwise agreed to in writing by the Company following a request by the Customer.
- 7.3 The Company shall use reasonable endeavours to meet the specified delivery and completion dates of the Quotation but shall not be held liable for any delays due to circumstances beyond the Company's reasonable control and will not in any circumstances be liable for any claims arising from delays, including but not limited to any consequential losses (whether direct or indirect) or any special losses suffered or incurred by the Customer whatsoever.
- 7.4 Failure or delay by the Company in making delivery or providing the services at the specified dates shall not entitle the Customer to cancel or repudiate the contract.

8. Risk, Ownership, and Title

- 8.1 Risk in the Goods passes to the Customer on Delivery to the Site, and the Customer is responsible for any loss, theft, damage or deterioration of or to the Goods from Delivery resulting from any cause other

than an accidental or erroneous event by the Company or the Company's agents that causes physical damage to the Goods on the Site.

- 8.2 Notwithstanding the passing of risk, title (ownership) to the Goods remains with the Company until the Company has received payment in full in respect of all Orders and any relevant variations.
- 8.3 The Customer shall be obliged to insure the goods from the time of Delivery to the Site and, pending payment in full, insure the goods in the name of the Company and the Customer for their respective interests.

9. PPSA

- 9.1 The retention of title to the Goods under clause 8.2 creates a Purchase Money Security Interest (as that term is defined in the PPSA) in the Collateral and these Terms create a Security Agreement (as that term is defined in the PPSA).
- 9.2 The Company is entitled to file a financing statement in relation to the security interest created by these Terms, and the Customer waives its right to receive a verification statement in relation to that registration.
- 9.3 The Customer agrees that it will not have, and to the extent required waives, the following rights set out in the PPSA:
 - a) the right to receive notice of sale of Goods under section 114(1)(a);
 - b) the right to receive a statement of account following the sale of the Goods under section 116;
 - c) the right to receive notice of our proposal to retain the Goods under section 120(2);
 - d) the right to object to our proposal to retain the Goods under section 121;
 - e) the right to not have the Goods damaged when we remove an accession under section 125;
 - f) the right to receive notice of removal of accession under section 129;
 - g) the right to apply to the court concerning the removal of an accession under section 131;
 - h) the right to reinstate the Agreement under section 133; and
- 9.4 The Customer irrevocably grants the Company the unreserved right to enter the premises of the Customer or its agents during normal business hours and remove Goods relating to the unpaid amount.
- 9.5 The Company is not responsible for any Claims that the Customer may suffer as a result of the Company's repossession or entry into the Customer's premises, whether or not the Goods are attached to other goods or property owned by the Customer.

10. Intellectual Property

- 10.1 All Company IP shall remain the property of the Company at all times.
- 10.2 The Customer shall not use any Company IP in any manner outside those contemplated by these Terms whatsoever without the Company's written authorisation.
- 10.3 Where the Customer provides Customer IP to the Company, the Customer:
 - a) authorises the Company to use the Customer IP solely for the purpose of supplying the Goods and/or Services;
 - b) Indemnifies the Company of all Claims that the Company may incur from its use of the Customer IP, including any purported infringement of any third party's intellectual property rights.

11. Guarantees, Warranties, and Liability

- 11.1 To the extent permitted by law, the Company makes no representation, assurance, condition, or warranty of any kind to the Customer, whether implied by law, trade, custom or otherwise and all other liabilities, including in contract or tort (including negligence) or otherwise, are expressly excluded to the fullest extent permitted by law.
- 11.2 The Company shall not be liable for any indirect or consequential loss to the Customer arising out of any breach of the obligations of the Company and the aggregate liability of the Company, whether in contract or otherwise, in respect to all claims for loss, damage or injury shall be limited to the lesser of the following:
 - a) the Total Value of the Order;
 - b) the cost of completing any necessary repairs or remedial work; or,

- c) the actual loss or damage suffered by the Customer.
- 11.3 The Company shall not be liable for any breach, failure or delay in performing any of its obligations under these Terms where such breach, failure or delay is caused by war, civil commotion, hostilities, strike or lock-out, act of God, fire, flood, explosion, earthquake, inclement weather, Governmental regulations or directions, industrial or labour disturbance, failure of suppliers, inability to obtain raw materials or any other cause beyond the Company's reasonable control.
 - a) If an event under clause 11.3 continues for a period of more than 3 months, then the Company may terminate this Agreement by notice in writing to the Customer without liability to perform further any obligations under this Agreement. If the Company terminates this Agreement pursuant to this clause, then the Customer shall pay all monies due to the Company up until the date of termination on a pro-rata basis.
- 11.4 The Customer must give the Company notice of a claim concerning defects in the Goods or workmanship of the Service supplied by the Company within thirty (30) days of delivery of the Goods or completion of the Services. If notice is not given within the required 30-day period, the Customer may not make any claim of any nature whatsoever (whether in contract, tort or otherwise) against the Company.
- 11.5 The Company will not be liable to remedy any unauthorised dismantling, repair, modification or any defects in or damage caused by work undertaken by the Customer or any of the Customer's contractors.

12. Termination and Suspension

- 12.1 The Customer will not be entitled to cancel any contract or Order at any time after acceptance of the quotation or estimate or a contract has been entered into without the Company's express written permission. If the Company agrees in writing to terminate an agreement after acceptance of an Order, but before Services have commenced or Goods ordered by the Company, then the Customer shall pay all actual and reasonable costs and expenses incurred by the Company together with a reasonable administration fee.
- 12.2 Any request to cancel must be made in writing by an authorised representative of the Customer and must be received at least thirty (30) days prior to Services commencing or Goods being delivered.
- 12.3 The Company reserves the right, without any liability, and without any prejudice to any other right it has in law or equity, to cancel or suspend in whole or in part any Order for the supply of Goods or Services to the Customer if:
 - a) the Customer fails to pay any amount owing from an issued invoice due on its due date for payment and within seven (7) days of a written notice of demand for the overdue amount;
 - b) the Customer commits an act of insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation, or any other event which evidences a lack of creditworthiness or solvency on the part of the Customer;
 - c) if the Customer is in default of any of the agreed Terms between the Company and the Customer and has not remedied the default within 14 days of receiving a written notice from the Company to remedy the default;
 - d) Customer requests a change or alteration in the scope of the Order for the Services or Goods to be provided that is not acceptable to the Company.
- 12.4 Any cancellation or suspension by the Company pursuant to the above clause 12.3 shall be without prejudice to any rights or remedies available to the Company, including but not limited to the Company's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of any Quotation between the Company and the Customer or the Customer's obligations to the Company under these Terms.

13. Dispute Resolution

- 13.1 If any dispute, claim, or controversy arises under or relating to the Order or these Terms, including any dispute concerning the existence or enforceability hereof ("Dispute"), the Parties shall first attempt to resolve the Dispute amicably by negotiation in good faith.
- 13.2 If a Dispute arises that cannot be resolved informally to the satisfaction of the Parties, either party may notify the other party in writing of the intent to submit the Dispute to mediation and provide the relevant

details of that Dispute (“Notification”). If the Parties are unable to satisfactorily resolve the Dispute within fourteen (14) days of the Notification, the Parties agree to refer the Dispute to mediation conducted by the Hire Industry Association of New Zealand in accordance with their mediation guidelines. The cost of the mediation, if any, shall be shared equally. The decision of the mediator shall be non-binding, but both parties agree to give due consideration to the mediator's recommendations.

13.3 If the Parties do not resolve the Dispute through mediation within twenty (20) working days of the Notification, either party may refer the Dispute to binding arbitration per the Arbitration Act 1996. The Parties may either mutually agree to select an arbitrator, or if the Parties are unable to agree, the Parties agree to appoint a minimum of one arbitrator selected by Civil Contractors New Zealand. The arbitrator will have the exclusive right to determine the arbitrability of any disputes, controversies, or claims. The arbitration will be final and binding on the Parties.

13.4 If a Dispute arises under this section 11, unless otherwise mutually agreed by the Parties or provided elsewhere in this Agreement, the Parties must continue to perform their respective obligations under the Order until the Dispute is resolved.

14. General

14.1 These Terms shall be governed by New Zealand law. The Customer agrees that the courts of New Zealand shall have exclusive jurisdiction to deal with any dispute arising from or in relation to these Terms.

14.2 Where the Customer is a registered company, trust or partnership, the Company may require that a person(s) acceptable to the Company shall personally guarantee the obligations of the Customer.

14.3 If any of these Terms are invalid, void, illegal or unenforceable, the remaining Terms shall not be affected, prejudiced or impaired.

14.4 Where the Company fails to enforce or delays in enforcing any right or remedy under these Terms, the Company will not be deemed to have waived such right or remedy. Any waiver must be in writing by the Company to be effective.

14.5 The Customer shall not assign any of its rights or obligations without the Company’s prior written consent.

14.6 The Customer understands that the Company are asking the Customer for personal information to allow the Company’s credit agency reporting service to credit check the Customer. The Customer understands that:

- a) The credit agency will give the Company information about the Customer for that purpose.
- b) The Company may give the Customer’s personal information to the credit agency, and the credit agency will hold that information on their systems and use it to provide their reporting service.
- c) The Company may use the credit agency credit reporting services in the future for purposes related to the provision of credit to the Customer. This may include using the credit agency's monitoring services to receive updates if any of the information held about the Customer changes.
- d) If the Customer defaults in the Customer’s payment obligations to the Company, information about the default may be given to the credit agency and the credit agency may give information about my default to other the credit agency customers.