



**TERMS AND CONDITIONS OF TRADE FOR  
PROPERTY PREP LIMITED TRADING AS MARKET READY**

**These terms and conditions are made pursuant to the Construction Contracts Act 2002 (“The Act”) and therefore all provisions under that Act shall apply.**

**1. GENERAL**

- 1.1 In these terms and conditions “Market Ready” means Property Prep Limited, or any agents or employees thereof.
- 1.2 Any goods or services (the “Work” or “any Work”) supplied by Market Ready to the Customer will be supplied on these terms and conditions. If the Customer orders Work, the Customer will be deemed to have accepted these terms and conditions. The only circumstance where any variation to these terms and conditions will apply is where Market Ready has expressly agreed in writing to that variation.
- 1.3 Where requested, estimates will be provided before Work is commenced. Estimates may be revised as the specifications of a project evolve or when there are changes to a project’s initially defined content and scope.

**2. PRICE**

- 2.1 Work will be invoiced at the price set by Market Ready plus GST and any amendments to the contract specifications and the price must be made in writing and agreed upon by both parties.
- 2.2 The Customer acknowledges that Market Ready may alter prices without notice and that the purchase price of Work may be different from the price quoted or the price current when Work was ordered.
- 2.3 If a project is terminated before completion, Market Ready will be compensated for all Work completed, materials ordered and any disbursements incurred up to the date of termination. In the event that the project is terminated prior to commencement and with less than 20 days notice, Market Ready may charge a cancellation fee equivalent to the amount of the deposit due.
- 2.4 Any additional work not included in the original quote or estimate (“Variations”), will result in additional charges. Where possible, these items will be negotiated and agreed before the variations are undertaken but if not, they will be charged at \$75.00 plus GST per hour plus labour and a cost plus 15% rate for any required materials for the Variations.

2.5 A quote provided by Market Ready is valid for 3 months from the date of the quote, after which Market Ready may withdraw and reprice the Work.

### **3. PAYMENT**

3.1 The invoiced price of Work is due and payable within 7 working days after a payment claim is served in accordance with the Act. Payment Schedules must be provided within 7 working days of the Payment Claim to which it relates.

3.2 Notwithstanding clause 3.1, Market Ready reserves the right to alter the payment terms including the requirement for payment for any Work in cash before the Work is undertaken. The terms will be stated on the front of the invoice.

3.3 Market Ready reserves the right to request a proportion of its estimate to be paid upfront prior to commencing any of the Work detailed in any estimate.

3.4 The Customer may not deduct or withhold any amount (whether by way of set-off counterclaim or otherwise) from any money owing to the Market Ready.

3.5 If full payment for any Work is not made to Market Ready by the due date for that payment, then the Customer shall be in default and the Customer shall at the Market Ready's discretion (and without affecting any other right Market Ready may have), pay default interest on any amount outstanding to Market Ready in accordance with the following:

- (a) the default interest rate shall be 3 per cent per month; and,
- (b) default interest shall accrue on a daily basis from the date when payment is due until the date when payment is actually made; and,
- (c) the Customer shall be liable to pay all expenses and costs (including legal costs as between solicitor and client) in relation to the Market Ready obtaining or attempting to obtain a remedy for the failure to pay.

3.6 All payments pursuant to 3.5((a)-(c) inclusive) shall be upon demand. The charging of default interest shall in no way imply the granting or an extension of credit by Market Ready to the Customer.

3.7 Market Ready reserves the right to discontinue any Work in hand for the client in the event of non-payment of accounts at the correct time.

### **4. SECURITY FOR PAYMENT**

4.1 In consideration of Market Ready providing, or agreeing to provide Work to the Customer or to others at the request of the Customer, the Customer by accepting delivery of the Work that includes goods grants to Market Ready under the Personal Property Securities Act 1999:

- (a) a Purchase Money Security Interest ("PMSI") in the goods; and,
- (b) agrees that any of the goods or proceeds of the goods coming into existence after the date of delivery will come into existence subject to the PMSI granted herein without the need for any further action by any party; and,
- (c) acknowledges that it has received valuable consideration from Market Ready and agrees that it is sufficient; and,
- (d) agrees that the PMSI has attached to all goods supplied to the Customer and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded herein; and,

- 4.2 For better securing the price of the goods or services supplied pursuant to these Terms of Trade, Market Ready shall have the right to mortgage or charge the property of the Customer to which the goods and services are being supplied, or any other property owned by the Customer.
- 4.3 The terms of such a mortgage shall incorporate such covenants and conditions as are included in Memorandum of Mortgage 1995/4004, of the most current Auckland District Law Society all obligations Memorandum, which Memorandum(s) is registered at the various land registries of Land Information New Zealand.
- 4.4 The Customer hereby irrevocably nominates and appoints Market Ready to be the attorney of the Customer for the purposes of giving and executing in favour of Market Ready a registrable Memorandum of Mortgage as described in this clause 4.
- 4.5 For the purposes of this clause "property" means real property.
- 4.6 If any goods supplied by Market Ready become fixtures that shall not diminish or extinguish any of the terms herein
- 4.7 The Customer will keep the goods insured and in good repair and free of any liens or encumbrances. For these purposes, the Customer agrees to make the goods available at any time for the inspection of Market Ready or its agent(s).
- 4.8 The Customer agrees that they shall treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors despite the fact the goods have become fixtures at any time before payment has been made.
- 4.9 Market Ready reserves the right to register a financing statement in respect of any goods supplied by Market Ready to the Customer pursuant to these Terms of Trade and in respect of which credit has been extended by Market Ready to the Customer.
- 4.10 The Customer waives their right to receive a copy of the verification statement confirming registration of a financing statement, or a financing change statement relating to the security interest under these Terms of Trade.
- 4.11 The Customer shall promptly, on request by Market Ready execute all documents and do all things necessary to perfect any security interest over goods in accordance with these Terms of Trade.
- 4.12 The Customer shall not agree nor allow any person to register a financing statement or security interest over any of the goods supplied by Market Ready without Market Ready's prior written consent.
- 4.13 If the Customer fails to make payment or is in default, as that term is defined in the Personal Property Securities Act 1999 (PPSA), then the Market Ready or its agents may enter the Customer's address and remove the goods without notice or judicial process and the Customer waives any right that may arise as a result of this removal. Any shortfall on sale of the goods will be paid by the Customer and/or Covenantor to the Market Ready.
- 4.14 Market Ready and the Customer agree that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA will apply to these Terms of Trade, or the security interest under these Terms of Trade.

## 5. **WARRANTIES**

- 5.1 Market Ready warrant the Work in respect of defects for a period of 2 months from the date of invoice; fair wear and tear and damage beyond Market Ready's control excepted but such warranty shall not apply:

- (a) to any damage caused as a result of house washing. In this respect, the Customer acknowledges that it is their duty to ensure all windows and doors are closed, towels placed around the areas where water may enter etc;
- (b) to Work which has been repaired by any person not authorised by Market Ready to do such repairs;
- (c) to any Work which has been incorrectly installed, maintained, handled or stored by the Customer or its agents;
- (d) to any Work which has been modified in any way;
- (e) if the recommendations as to use, installation or maintenance of the Work not been adhered to not detailed by Market Ready (it being the responsibility of the Customer to obtain that information).

5.2 Except for the warranty in clause 5.1, all warranties, descriptions, representations or conditions whether implied by the Sale of Goods Act 1908 or otherwise is expressly excluded to the fullest extent permitted by law.

5.3 Under section 41(2) and or 43A Consumer Guarantees Act 1991, as appropriate, Market Ready and the Customer contract out of that Act.

5.4 In any event, the total liability of Market Ready whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any goods or any other breach of the Market Ready's obligations shall in any case be limited at the Market Ready's option, except where statute expressly requires otherwise, to either the repair or replacement of the goods complained of, or the refund of the purchase price (provided that if Market Ready is no longer manufacturing the identical product at the time of the claim, it may replace the product with the closest equivalent then being manufactured).

5.5 While Market Ready will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by Market Ready in relation to the Work that is goods manufactured or supplied by Market Ready or their use or application, Market Ready does not accept any liability or responsibility in respect thereof.

5.7 Market Ready will have no liability either in contract or in tort for any loss suffered by the Customer or any third party claiming through the Customer for which Market Ready has not accepted in writing for such loss.

5.8 Market Ready makes no representations or warranties in respect of the Work supplied by it to the Customer unless such representation or warranty is made by Market Ready in writing to the Customer.

## **6. SUBCONTRACTORS**

6.1 Market Ready may appoint subcontractors to do any part of the Work.

6.2 Market Ready may charge an administration fee for any Work carried out by a subcontractor

## **7. PRIVACY ACT 1993**

7.1 The Customer and any guarantor acknowledge that Market Ready may:

- (a) collect from and disclose to the Customer, any Guarantor, or any appropriate third party any personal information concerning the Customer or a Guarantor as Market Ready may consider appropriately required;
  - (i) for the purpose of processing the Customer's order; or,

- (ii) for any other purpose in trade with the Customer or any Guarantor under the circumstances at the time of that collection or disclosure.
- (b) use and retain any personal information which related to the Customer or any Guarantor as may be required by Market Ready in the ordinary course of its business.

## **8. SEVERANCE**

- 8.1 If any clause or part of a clause of these terms and conditions is held to be invalid or unenforceable for whatever reason to the extent not inconsistent with the aforementioned invalid clause, the remaining provisions shall remain in full force and effect.

## **9. FORCE MAJEURE AND DELAY**

- 9.1 Market Ready shall not be liable for any delay in performing its obligations under this agreement to the Customer caused in whole or in part by force majeure which shall include (but not limited to) an act of God, natural disasters, strikes, lockouts, fire, war suit, civil commotion, inability to obtain products or supplies including the imposition of any export or import bans or any other cause beyond the reasonable control of the Market Ready.
- 9.2 Any time or date given by Market Ready for delivery or uplifting of Work is intended only as an estimate and Market Ready shall not be liable for the consequences of delay however arising and the Customer acknowledges that Market Ready will not accept any liability for any claims or losses arising from its failure to meet the delivery date (if any).

## **10. INSURANCE**

- 10.1 Where the Work involves physical change to an existing structure including additions or alterations Work then the Customer shall arrange insurance:
  - (a) for the Work against loss or damage for not less than the actual total of the contract Price; and
  - (b) for full replacement value against loss or damage to the Customer's existing structure made available to enable performance of the Work or adjacent to the Work and against loss or damage to the Customer's contents; and
  - (c) against consequential loss arising from loss or damage to the Customer's existing structures made available for the Work to be carried out.
  - (d) Customer is to make insurer aware of the proposed Works.
  - (e) shall include a waiver of the insurer's right to subrogation in favour of Market Ready.
- 10.2 In the case of additions or alterations Work, insurance cover under clause 10.1 may be provided under the Customer's existing policy of insurance in relation to the existing building or structure as an extension of such policy and:
  - (a) shall be in the joint names of the Customer and the mortgagee (if any); and
  - (b) shall not be able to be cancelled or materially changed without giving at least ten (10) working days prior notification by the insurer in writing to the Builder and the Customer; and
  - (c) shall include a waiver of the insurer's right to subrogation in favour of Market Ready.

(d) Customer is to make insurer aware of the proposed Works.

## **11. NOTICES**

11.1 Every notice to be given under the terms of this Agreement shall be in writing, addressed to the person to whom it affects, dated, and signed by the author.

## **12. DISPUTE RESOLUTION**

12.1 In case of any dispute between Market Ready and the Owner arising from the Building Contract, the party raising the dispute shall give the other party written notice specifying particulars of the dispute. Market Ready and the Owner shall then, within five Working Days or such other time period as agreed upon, use their best efforts to resolve any dispute through good faith negotiations.

12.2 If negotiations do not resolve the dispute, then either party will be able to refer the dispute to mediation by a mediator agreed between the parties or appointed by the President of New Zealand Law Society. If the dispute is not resolved through mediation, then either party will be able to refer the dispute to adjudication under the Construction Contracts Act 2002. Each party will be required to continue to perform its obligations under the contract as far as practicable given the nature of the dispute.

12.3 For the avoidance of doubt, nothing in this clause shall prevent any party to this Agreement from seeking urgent interlocutory relief from any court of competent jurisdiction.

12.4 Clauses 12.1 to 13.3 shall survive the termination of this Agreement.

## **13. AGENCY**

13.1 The Customer authorises Market Ready to contract either as principal or agent for the provision of goods or services that are the subject matter of this contract.

13.2 Where Market Ready enters into a contract of the type referred to in clause 13.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## **14. MISCELLANEOUS**

14.1 If at any time Market Ready does not enforce any of these terms and conditions or grants the Customer time or other indulgence, Market Ready shall not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.

14.2 The Customer acknowledges that Market Ready may receive commission or referral fees from contractors or agents relating to the Work and the customer releases Market Ready from any duty to disclose the same.

14.3 The Customer agrees to comply with all healthy and safety directions from Market Ready and further agrees to be responsible for ensuring any hazards at the property, not in the control of Market Ready, are controlled or eliminated.