

## Corporate Debt Management Policy

### Terms and Conditions

#### 1. General

- 1.1 These terms and Conditions (“Terms”) do not apply to rates levied by Horowhenua District Council. Rates information can be found on the Council’s website [www.horowhenua.govt.nz](http://www.horowhenua.govt.nz).
- 1.2 Any agreement between Horowhenua District Council (“we”, “our”, or “us”) to supply goods and/or services and/or credit in any form to a Customer (“you” or “your”) shall constitute a binding contract (the “Contract”) and acceptance of these Terms.
- 1.3 In these Terms “goods” and/or “services” mean the goods and/or services described in any one or more relevant quotation, order form, invoice, application form or equivalent document prepared by us in relation to the supply of any goods and/or service to you. Each such document and these Terms shall be deemed to be incorporated into, and form part of, the Contract provided that these Terms shall prevail in the event of any conflict.

#### 2. Provision of Credit

- 2.1 You shall be liable for the payment of all indebtedness incurred by you pursuant to the Contract or any other agreement with us, whether the goods and/or services are supplied to you directly, or to some other person at the request of you or your agent and notwithstanding that you may have incurred all or part of that indebtedness as agent for any other person.
- 2.2 Where there is more than one individual or company acquiring goods and services under the Contract with us, you shall be jointly and severally liable with each other individual or company.

#### 3. Payments

- 3.1 Payments of our invoices must be made in accordance with the instructions on the invoice and if not so specified, within 30 days following the date of the invoice, unless otherwise agreed by us in writing.
- 3.2 If you do not pay all monies due to us on or before the due date for payment, in addition to our other rights, you agree that we shall have the right to charge you a late payment fee of 2% of the amount owed for every month or part month after the due date that the amount remains unpaid (whether before or after any judgement).
- 3.3 Payments received will be applied first in payment of interest incurred and secondly in payment of other monies due to us.
- 3.4 If any amount remains unpaid after its due date and the amount unpaid is not subject to a genuine dispute (as determined by us), we will send your unpaid debt to a debt collection agency for recovery.

3.5 You agree that you will be liable for and will, upon demand, pay all of our reasonable expenses and costs incurred in the collection of overdue monies including cheque dishonour fees, debt collector's fees, legal costs (on a solicitor / agent/ client basis) and court costs.

#### **4. Variations**

4.1 If you and we agree to vary the services to be performed or the goods to be supplied we reserve the right to vary our charges and you agree to pay the amount agreed between you and us for such work. You agree that if our charges have not been agreed you will pay our normal charges for such work in accordance with our relevant standard charging policies, or where no normal charge exists, such charge as we (in our sole discretion) determine as reasonable for the work done or goods supplied.

#### **5. Risk and Property**

5.1 Property in, ownership of and title to any goods supplied to you or to any other person at your request shall remain with us until the purchase price for all goods so supplied has been received by us in full (including any interest, late payment fees and any applicable expenses and costs.) The risk for any loss or damage passes to you on delivery.

#### **6. Cancellation**

6.1 We may, in addition to all other rights and remedies we have at law, suspend or terminate the supply of goods and/or services to you and any of our obligations under the Contract or any other agreement between you and us if:

- a. You fail to meet any obligation under the Contract or other agreement between you and us (or any person related to us); or
- b. Any cheque, credit card payment or electronic funds transfer we receive in payment of any amount owed by you is dishonoured or reversed; or
- c. You are subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency, receivership, or an arrangement with creditors or which generally precedes such an event; or any judgment against you remains unsatisfied for 7 or more days; or
- d. An event occurs or information becomes known to us which, in our opinion, might materially affect your creditworthiness or your ability, or willingness to comply with your obligations under the Contract or any other agreement between you and us.

#### **7. Effect of Cancellation**

7.1 Upon the cancellation of all or part of the Contract under clause 6, all amounts owing to us under the Contract and any other agreement between you and us shall immediately become due and payable, notwithstanding the due date for payment may not have arisen.

## **8. Performance**

8.1 Any time stated for delivering goods or performing services is an estimate only. We are not liable for any delay in delivering goods or performing services and any such delay will not entitle you to cancel the Contract, refuse to accept the goods or services or vary the amount of, or delay payment of, the agreed price.

## **9. Limitation of Liability**

9.1 We (and our employees and agents) will not be liable for any claim by you or any other person for any loss, damage or expense other than any direct loss arising from a default by us under the Contract provided that:

- a. Any liability of ours arising under the Contract shall in all circumstances be limited to and shall not exceed the amount received by us from you for the goods and/or services in relation to which the liability has arisen; and
- b. We shall not be liable for loss caused by a breach resulting from an event outside our reasonable control.

9.2 For the avoidance of doubt, to the extent permitted by law, we (and our employees, officers and agents) will not be liable for any claim by you or any other person:

- a. for consequential or indirect loss, damage or expense of any kind (including economic loss, loss of profits or any similar claim);
- b. relating to or arising from any terms and conditions, warranties, descriptions or representations except those expressly set out in writing in the Contract;
- c. relating to arising from the exercise by us of our rights, powers or remedies under the Contract, including following the occurrence of an event of default (or any similar event however described), and you agree to indemnify us (and our employees and agents) for any loss, damage or expense we suffer or incur as a result of or in connection with any such claim.

## **10. Miscellaneous**

10.1 We may, but you shall not, assign or transfer any of the rights and obligations under any Contract (including these Terms).

10.2 If you are not a consumer (as defined in the Consumer Guarantees Act 1993 ("CGA")), or if you acquire or hold yourself out as acquiring the goods and/or services for the purposes of a business, nothing in the CGA shall apply to the supply of the goods and/or services. In all other cases, if (but only to the extent that) the CGA applies, the provisions of the Contract (including these Terms) shall apply only to the extent that they do not limit or exclude any provisions of the CGA, and shall take effect subject to the provisions of the CGA.