

## TERMS OF TRADE

### 1 About these Terms

#### 1.1 In these Terms:

- (a) "we", "us", and "our" means Matt Lovett Limited;
- (b) "you" means you (our customer) and where there is more than one of you, means each of you separately and all of you together;
- (c) "Terms" means these terms of trade;
- (d) "Work" means any work that we do for you (including the supply of goods and/or services); and
- (e) a reference to any legislation includes any modification and re-enactment of that legislation and a regulation from time to time issued or made under the legislation.

1.2 Unless we agree otherwise in writing with you, these Terms will apply to all Work we do for you and by asking us to do Work for you, you agree that these Terms apply.

1.3 We may amend these Terms from time to time. Our amended terms will take effect on the date that is 30 days from the date that the amended terms are published on our website.

### 2 Requests for Work

2.1 You may ask us to do Work for you at any time. We are not obliged to accept any requests for Work from you.

2.2 We may impose further terms and conditions prior to undertaking any Work for you (including terms requiring you to provide us with information relating to the Work or requiring your directors to provide us with a guarantee of your payment obligations).

### 3 What we will do

In performing the Work, we will:

- (a) use reasonable skill, care and diligence;
- (b) comply with all applicable laws, and the requirements of any applicable resource consent and workplace policies (including your health and safety, environmental and biosecurity policies) provided by you to us in writing before we start the Work;
- (c) use reasonable commercial endeavours to perform the Work in a timely manner and in accordance with any time frame agreed in writing with you; and
- (d) ensure that our equipment and vehicles has been cleaned and disinfected before bringing our equipment and vehicles onto your property;
- (e) comply with your reasonable instructions.

### 4 What you must do

4.1 To enable us to perform the Work in accordance with clause 3, you must:

- (a) give us clear instructions and provide us with all

information relevant to the Work you have asked us to do (including copies of any applicable resource consents, or workplace policies);

(b) provide us with unobstructed, safe access to any ponds and paddocks in which Work is to be undertaken;

(c) notify us of any potential hazards on your property that may pose a risk to us, our employees or equipment before we commence Work for you (including any weight or size restrictions on bridges or culverts, locations of waterways, sink holes, burn pits, rubbish holes or other depressions on your property and notices or restrictions imposed by any regulatory authority including the Ministry for Primary Industries);

(d) ensure ponds and paddocks in which Work is being undertaken are free of debris;

(e) provide us with access to water and a suitable area to wash-down our equipment and vehicles;

(f) inform us of all relevant resource consent information in relation to your property (including consent numbers and any directions for special spreading methods);

(g) ensure that the Work is fit for the purpose you intend to use it for; and

(h) meet any relevant statutory, regulatory, governmental and industry and environmental controls, standards or practices.

4.2 Where we are carrying out spreading Work for you on an area of your property, you must withhold stock from that area until the product that has been spread is dry or such longer period as we may advise.

### 5 Estimates and charges

5.1 Unless we have expressly agreed with you in writing to do Work for a fixed price any price we give you for Work is an estimate only and is subject to change. You must pay us our actual cost of completing the Work, calculated on a time and materials basis at our applicable rates at the time.

5.2 You must also pay disbursements (including mileage, the costs of any consumables, and any other delivery or transport costs which we incur) and the costs of any goods supplied by us in relation to the Work. We are entitled to charge a reasonable mark-up on goods we supply and consumables used by us in connection with performing the Work.

5.3 All amounts referred to by us exclude GST. You must pay GST at the same time and in the same manner as the supply to which the GST relates.

### 6 Payment

6.1 We will invoice you at the end of each month for

any Work undertaken for you in that month.

- 6.2 You must pay our invoices in full, without any set-off, withholding or deduction of any kind on or before the 20th of the month following the date of our invoice.
- 6.3 If you do not pay any amount when due, we may:
- (a) charge interest, at the rate of 5% per month on the overdue amount. Interest will be calculated daily and may be compounded monthly to your account (so that it also bears interest); and
  - (b) suspend any Work we are currently doing for you.

## 7 Our liability to you

- 7.1 Our liability to you (whether in contract, tort (including negligence), or otherwise) is limited to direct losses that you suffer or incur as a result of a breach of these terms by us and will be limited to (at our discretion):
- (a) us making good, at our cost any damage we have done to your property; or
  - (b) us reperforming the Works; or
  - (c) us refunding to you the amount actually paid by you in relation to that part of the Works giving rise to the breach.
- 7.2 In no event will we be liable to you (whether in contract, tort (including negligence) or otherwise) for any:
- (a) loss of profit or savings, loss of revenue, loss of goodwill or opportunity; or
  - (b) loss, damage, cost or expense of any kind whatsoever which is indirect, consequential or of a special or punitive nature even if such loss, damage, cost or expense was reasonably foreseeable by us.
- 7.3 Except to the extent of any written warranties given by us to you, all warranties (whether statutory, expressed or implied) are excluded to the maximum extent permitted by law.
- 7.4 Both of us agree that where we do Work for you in trade the Consumer Guarantees Act 1993 does not apply.

## 8 Circumstances beyond our control

We will not be liable for any loss or damage, or any delay or failure to perform the Work if the cause of the loss or damage or delay or failure is beyond our reasonable control (including inclement weather).

## 9 Your liability to us

You indemnify us against any loss, damage, cost (including legal costs on a solicitor and own client basis) or expense incurred or suffered by us in connection with a breach of any of these Terms by you.

## 10 What we may and may not do with your information

- 10.1 We may collect information (including personal information) to enable us to perform the Work for

you. We agree to treat any personal information you provide us in accordance with the Privacy Act 1993.

- 10.2 We may use the information you provide to us to:

- (a) communicate with you in relation to the Work you have asked us to do;
- (b) provide you with information about the goods and services we provide and where you have provided us with an email address you acknowledge that we may use that email address for this purpose;
- (c) carry out a credit check on you and for our own business administrative purposes.

- 10.3 You have a right to access and ask us to correct any personal information that we hold about you. Please contact us if you wish to do so.

## 11 General

- 11.1 **Disputes:** If a dispute arises out of or relates to these Terms or Work we do for you, we will both endeavour to resolve the dispute by good faith negotiations between us. If we are unable to resolve the dispute during negotiations, either one of us may refer the dispute to mediation by notice in writing by a mediator to be agreed between the both of us within five working days of that notice or failing agreement by the President of the New Zealand Law Society or his or her nominee. We will share the costs of the mediator equally.
- 11.2 **Confidentiality:** Each of us agree to hold in confidence all information concerning the other or the other's affairs that is acquired while working together, including information relating to the other's finances and commercial dealings. Each of us will only disclose confidential information of the other party if it is necessary or desirable to enable us to carry out the other's instructions, comply with our obligations under these terms or to the extent it is required by law.
- 11.3 **Entire agreement:** These Terms and any written communication between us as to the scope of the Works constitute the entire agreement between the parties as to its subject matter and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.
- 11.4 **Assignment:** You are not entitled to assign or transfer any right or benefit you have under these Terms without our prior written consent.
- 11.5 **Waiver:** A waiver of these Terms will only be effective if given by us in writing and only to the extent expressly stated to be given. Any waiver will not affect our rights under these Terms at any future time.
- 11.6 **Severability:** Any unlawful or voidable provision or part provision in these Terms shall be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from these Terms without affecting the validity, legality or enforceability of the remaining provisions or part provisions.