

# Water Testing Hawkes Bay – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Water Testing HB" means Water Testing HB (2016) Limited T/A Water Testing Hawkes Bay, its successors or assigns or any person acting on behalf of and with the authority of Water Testing HB (2016) Limited T/A Water Testing Hawkes Bay.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting Water Testing HB to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by Water Testing HB in the course of it conducting, or supplying to the Customer, any Services.
- 1.4 "Services" means all Services supplied by Water Testing HB to the Customer at the Customer's request from time to time.
- 1.5 "Price" means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between Water Testing HB and the Customer in accordance with clause 6 of this contract.
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by Water Testing HB.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and Water Testing HB.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that Water Testing HB shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Water Testing HB in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Water Testing HB in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of Water Testing HB, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Customer shall give Water Testing HB not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, change of trustees or business practice). The Customer shall be liable for any loss incurred by Water Testing HB as a result of the Customer's failure to comply with this clause.
5. **Authorised Representatives**
- 5.1 The Customer acknowledges that Water Testing HB for the duration of the Services liaises directly with one (1) or more authorised representatives, and that those introduced as such to Water Testing HB, that person or persons shall have the full authority of the Customer to order any Services and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Water Testing HB for all additional costs incurred by Water Testing HB (including Water Testing HB's profit margin) in providing any Services or variations requested thereby by the Customer's duly authorised representative.
- 5.2 In the event that the Customer's duly authorised representatives as per clause 5.1 are to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Water Testing HB in writing of the parameters of the limited authority granted to their representatives.
6. **Price and Payment**
- 6.1 At Water Testing HB's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Water Testing HB to the Customer; or
- (b) the Price as at the date of delivery of the Services according to Water Testing HB's current price list; or
- (c) Water Testing HB's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Water Testing HB reserves the right to change the Price if a variation to Water Testing HB's quotation is requested. Any variation from the plan of scheduled Services or scope (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as additional testing requirement, a change to the number of samples to be tested or as a result of any increase to Water Testing HB in the cost of materials and labour) will be charged for on the basis of Water Testing HB's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Water Testing HB within ten (10) working days. Failure to do so will entitle Water Testing HB to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by Water Testing HB, which may be:
- (a) by way of instalments/progress payments in accordance with Water Testing HB's payment schedule;
- (b) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by Water Testing HB.
- 6.4 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Water Testing HB.
- 6.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Water Testing HB nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Water Testing HB an amount equal to any GST Water Testing HB must pay for any supply by Water Testing HB under this or any other contract for providing Water Testing HB's Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
7. Water Testing HB and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
- (a) the Customer has paid Water Testing HB all amounts owing for the Services; and
- (b) the Customer has met all other obligations due by the Customer to Water Testing HB in respect of all contracts between Water Testing HB and the Customer.
- 7.6 Receipt by Water Testing HB of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Water Testing HB's ownership or rights in respect of the Incidental Items shall continue.
- 7.7 **Delivery of Services**
- At Water Testing HB's sole discretion delivery of the Services shall take place when the Services are supplied to the Customer at Water Testing HB's address. The Customer acknowledges and accepts that testing results are sent by email.
- 7.8 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this contract.
- 7.9 Water Testing HB may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.10 Any time specified by Water Testing HB for delivery of the Services is an estimate only and Water Testing HB will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that Water Testing HB is unable to supply the Services as agreed solely due to any action or inaction of the Customer then Water Testing HB shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 7.11 **Risk**
- The Customer acknowledges and accepts that where the Customer takes the samples that an appropriate collection method should be adopted, labelling and pertinent details are to be noted, time restraints and methods of storage and/or transportation recommendations may apply to the samples to ensure accurate testing can be performed. Where the Customer fails to follow any guidelines or instructions from Water Testing HB, then Water Testing HB shall not be held liable where test samples are not viable or may result in poor analysis occurring.
- 7.12 **Test Results, and Report Scope and Limitation**
- The test results and report is intended only as a general guide to assist the Customer to make their own evaluation of the overall water quality or other sample result, and is not intended to make any representation as to the quality of the water way in general. The report expresses the result of the sample taken from a specific site and reflects the conditions that existed at the time of the sample was taken only.
- 7.13 The test results and report are not intended to be technically exhaustive, or to imply that every sample was tested for a full range of test options that may be available. The inspection and report should not be construed as a compliance inspection of any water way, legal or territory authority standards, codes or regulations, other than if outlined. From time to time water standards can be, or will be set by various regulatory bodies to New Zealand standards, as these standards can change at any time and without notice.
- 7.14 **Access**
- Where Water Testing HB is to gather samples as directed by the Customer, it is the responsibility of the Customer to ensure that clear access to and from the sampling site is free from contamination and that the access is suitable to accept Water Testing HB's vehicles or any other equipment as may be deemed necessary by Water Testing HB. Furthermore (where applicable):
- (a) where the sampling sites are not accessible by vehicle, then the Customer shall ensure any mode of transportation to the sampling site is provided by the Customer at the Customer's expense; and
- (b) the Customer shall pay the cost of replacement, repair or rectification to any paths, driveways, and access routes to the property. The Customer shall also be liable for all costs associated with any delays due to access unless otherwise specified at the time of Water Testing HB's engagement.
- 7.15 **Confidentiality**
- Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 7.16 The Customer assumes liability for all loss or damage suffered by Water Testing HB as a result of breach of confidentiality undertaken by itself, or its employees or agents.
- 7.17 Neither party will use the other party's confidential information without prior written consent except strictly for the purposes contemplated by this contract, and a party may only disclose the other party's confidential information:
- (a) if required by law;
- (b) to exercise their rights under this contract;
- (c) if necessary to perform their obligations under this contract;
- (d) if the other party has provided their written consent to the disclosure.
- 7.18 Confidential information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this contract);
- (b) received from a third party entitled to disclose it;
- (c) that is independently developed.
- 7.19 The obligations of this clause 11 shall survive termination or cancellation of this contract.
- 7.20 **Compliance with Laws**
- The Customer and Water Testing HB shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities or industry compliance (including, but not limited to, quality control processes, results and/or reports being signed off by the Key Technical Person where applicable) that may be applicable to the Services.
- 7.21 Where additional testing is required that is to be performed at a partner laboratory as part of the Services, such partner laboratories will be a registered IANZ (International Accreditation New Zealand) facility.
- 7.22 The Customer agrees that the any sampling site that Water Testing HB attends will comply with any WorkSafe health and safety laws relating to the site.
- 7.23 **Personal Property Securities Act 1999 ("PPSA")**
- By assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Incidental Items and/or collateral (account) – being a monetary obligation – to the Customer to Water Testing HB for Services – that have previously been supplied and that will be supplied in the future by Water Testing HB to the Customer.
- 7.24 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Water Testing HB may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Water Testing HB for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of Water Testing HB.
- 7.25 Water Testing HB and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.26 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 128, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by Water Testing HB, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.27 The Customer shall unconditionally ratify any actions taken by Water Testing HB under clauses 13.1 to 13.5.
- 7.28 **Security and Charge**
- In consideration of Water Testing HB agreeing to supply Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 7.29 The Customer indemnifies Water Testing HB from and against all Water Testing HB's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Water Testing HB's rights under this clause.
- 7.30 The Customer irrevocably appoints Water Testing HB and each director of Water Testing HB as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 7.31 **Defective Services**
- The Customer shall inspect the results of the Services on delivery and shall immediately notify Water Testing HB of any alleged defect, shortage in quantity, or failure to comply with the description or quote. The Customer shall afford Water Testing HB an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 7.32 For defective Services, which Water Testing HB has agreed in writing that the Customer is entitled to reject, Water Testing HB's liability is limited to either (at Water Testing HB's discretion) re-providing the Services provided that the Customer has complied with the provisions of clause 15.1.
- 7.33 **Consumer Guarantees Act 1993**
- If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by Water Testing HB to the Customer.
- 7.34 **Intellectual Property**
- Where Water Testing HB has designed, drawn or developed Incidental Items for the Customer, then the copyright in any Incidental Items shall remain the property of Water Testing HB. Under no circumstances may such designs, drawings and documents be used without the express written approval of Water Testing HB.
- 7.35 The Customer warrants that all designs, specifications or instructions given to Water Testing HB will not cause Water Testing HB to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Water Testing HB against any action taken by a third party against Water Testing HB in respect of any such infringement.
- 7.36 The Customer agrees that Water Testing HB may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which Water Testing HB has created for the Customer.
- 7.37 **Default and Consequences of Default**
- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Water Testing HB's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.38 If the Customer owes Water Testing HB any money the Customer shall indemnify Water Testing HB from and against all costs and disbursements incurred by Water Testing HB in recovering the debt (including but not limited to internal administration fees, legal costs of a solicitor and own client basis, Water Testing HB's collection agency costs, and bank dishonour fees).
- 7.39 Further to any other rights or remedies Water Testing HB may have under this contract, if a Customer has made payment to Water Testing HB, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Water Testing HB under this clause 18, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 7.40 Without prejudice to Water Testing HB's other remedies at law Water Testing HB shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Water Testing HB shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Water Testing HB becomes overdue, or the Customer relating to payment to the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by Water Testing HB;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 7.41 **Cancellation**
- Without prejudice to any other remedies Water Testing HB may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Water Testing HB may suspend or terminate the supply of Services to the Customer. Water Testing HB will not be liable to the Customer for any loss or damage the Customer suffers because Water Testing HB has exercised its rights under this clause.
- 7.42 Water Testing HB may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice Water Testing HB shall repay to the Customer any money paid by the Customer for the Services.
- 7.43 Water Testing HB shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 7.44 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Water Testing HB as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 7.45 **Privacy Act 1993**
- The Customer authorises Water Testing HB or Water Testing HB's agent to:
- (a) access, collect, retain and use any information about the Customer;
- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by Water Testing HB from the Customer directly or obtained by Water Testing HB from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 7.46 Where the Customer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 7.47 The Customer shall have the right to request Water Testing HB for a copy of the information about the Customer retained by Water Testing HB and the right to request Water Testing HB to correct any incorrect information about the Customer held by Water Testing HB.
- 7.48 **Service of Notices**
- Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 7.49 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 7.50 **Trusts**
- If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Water Testing HB may have notice of the Trust, the Customer covenants with Water Testing HB as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Customer will not without consent in writing of Water Testing HB (Water Testing HB will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 7.51 **Limitation of Liability**
- Water Testing HB undertakes to act in a professional manner with all due skill and care. Notwithstanding Water Testing HB shall only be liable to the Customer for the consequences of any negligent act, omission or statement of Water Testing HB or Water Testing HB's employees and then only to the extent and limitations referred to in clause 23.2.
- 7.52 The amount and damage for which Water Testing HB is so liable and the recompense to be made by Water Testing HB to a Customer for such liability as specified in clause 23.1, shall be limited to the limit of Water Testing HB's Professional Indemnity cover in respect of any single act, omission or statement, unless otherwise specified in Water Testing HB's quotation.
- 7.53 The liability of Water Testing HB shall cover only direct loss or damage in respect of Services or other matters arising directly from within the scope of the Services agreed in Water Testing HB's quotation and then only to the maximum limit specified in clause 23.2. All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Customer is liable and responsible (as between the Customer and the third party) whether by statute, contract tort or otherwise.
- 7.54 The Customer agrees to indemnify Water Testing HB against all loss or damage sustained or sustainable by Water Testing HB as a result of any breach of contract or negligent act on the part of the Customer or the Customer's employees or agents.
- 7.55 **General**
- The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 7.56 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 7.57 Water Testing HB may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 7.58 The Customer cannot licence or assign without the written approval of Water Testing HB.
- 7.59 Water Testing HB may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Water Testing HB's sub-contractors without the authority of Water Testing HB.
- 7.60 The Customer agrees that Water Testing HB may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Water Testing HB to provide Goods to the Customer.
- 7.61 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 7.62 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

Please note that a larger print version of these terms and conditions is available from Water Testing HB on request.