



## **WAIHI FARM & INDUSTRIAL SERVICES 2022 LIMITED - TERMS AND CONDITIONS OF TRADE**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 "Contract" shall mean the agreement (whether written or verbal) between WAIHI FARM & INDUSTRIAL and the Client for the supply of Equipment and/or Services.
- 1.2 "Client" shall mean any person or entity that WAIHI FARM & INDUSTRIAL carries out services for and if there is more than one Client then each person or entity is jointly and severally the Client.
- 1.3 "Client's Site" shall mean the site (or sites if applicable) owned, occupied or under the control of the Client which require the Services of WAIHI FARM & INDUSTRIAL under the Contract.
- 1.4 "Person" includes a company, partnership, family trust, individual or any other entity.
- 1.5 "Equipment" shall mean any gear, parts, components, equipment and/or materials provided by WAIHI FARM & INDUSTRIAL in completing its Contract with a Client.
- 1.6 "Services" shall mean the services to be supplied by WAIHI FARM & INDUSTRIAL to the Client in satisfying the Contract and may include, without limitation, services regarding installation of pumps, tanks, and pipes for professional or domestic purposes, the general service and maintenance of installed equipment, and the delivery of said Equipment.
- 1.7 "WAIHI FARM & INDUSTRIAL" shall mean WAIHI FARM & INDUSTRIAL SERVICES 2022 LIMITED, its successors and assigns or any person acting on behalf of and with the authority of WAIHI FARM & INDUSTRIAL.
- 1.8 Unless the context requires otherwise:
- 1.9.1 References to any statute, regulations or other statutory instrument or by-law shall be deemed to be references to a statute, regulations, instrument or by-law of New Zealand as from time to time amended and includes substitute provisions (whether in an amendment of existing legislation or in new legislation) that substantially correspond to those referred to;
- 1.9.2 Where the context requires or admits, words importing the singular shall import the plural and vice versa; and
- 1.9.3 References to any party includes the successors and any permitted assigns of that party and party means them collectively.

### **2. ACCEPTANCE OF TERMS AND CONDITIONS OF TRADE**

- 2.1 Any instructions received by WAIHI FARM & INDUSTRIAL from the Client shall constitute acceptance of these terms and conditions of trade and the terms and conditions of trade shall form part of a binding contract between WAIHI FARM & INDUSTRIAL and the Client.
- 2.2 These terms and conditions of trade do not require the Client's signature to be deemed to be binding.
- 2.3 The Client warrants it has the power to enter into a Contract with WAIHI FARM & INDUSTRIAL and has obtained all necessary authorisations to do so. The Client further warrants it is not insolvent and accepts the Contract creates binding and valid legal obligations on it.

### **3. PERSONAL GUARANTEE**

- 3.1 WAIHI FARM & INDUSTRIAL may require one or more of the representatives of the Client to jointly and severally personally guarantee the Client's obligations under any Contract with WAIHI FARM & INDUSTRIAL.

### **4. PRICING INFORMATION**

- 4.1 WAIHI FARM & INDUSTRIAL may issue a quote or price estimate for any Contract it enters into with a Client. If so, the terms of the quote or price estimate. The price of installed Equipment shall be calculated by WAIHI FARM & INDUSTRIAL and included on the Client's invoice.
- 4.2 If WAIHI FARM & INDUSTRIAL do not provide a quote or a price estimate, or its quote or price estimate does not cover all of the Services to be provided, then pricing for Services and any hire equipment are as follows (all amounts are exclusive of GST (if any)):
- 4.2.1 Service fees:
4. Mileage Fee: \$1.75/Km
5. Minimum Labour Charge 30 minutes
- 4.2.3 Other Fees:
1. Overdue Invoice Charge: \$100
2. Monthly Compounding Interest Charge: 5.5%
- 4.3 After Hours Call Out Fee: WAIHI FARM & INDUSTRIAL's normal hours of business are defined as being from 8:00am – 5:00pm Monday to Friday. Work done outside of these hours is subject to an after-hours call out fee of \$240 ex gst which includes the first hour of labour.
4. 4 Call Out Fee: A call out fee is a one-off charge and does not include mileage

4. 5 Mileage: WAIHI FARM & INDUSTRIAL reserves the right to reasonably charge the Client to cover the cost of running the vehicles.
4. 6 Parking Permits/Tolls/Paid Parking: Should WAIHI FARM & INDUSTRIAL be required to pay for parking or any other vehicle travel costs in the course of carrying out work for the Client, these costs will be passed on to the Client.
4. 7 Additional Travel to the Job Site: WAIHI FARM & INDUSTRIAL allows up to 30 minutes travel time to the Client's site. This cost is covered in the call-out fee. If it takes longer than 30 minutes to travel to the job, WAIHI FARM & INDUSTRIAL reserve the right to charge the cost of this additional travel time to the Client.
- 4.8 Additional Travel Back to Office/Workshop: If the Client's property is located outside of normal travel routes, WAIHI FARM & INDUSTRIAL reserves the right to charge the Client for the time it takes for the tradespeople to travel back to the office/workshop. If it is more than 30 minutes, the Client may be charged for the extra time it takes tradespeople to reach their destination. The Client is exempt from this charge in situations of reasonable travel to and from home that are lengthened by peak motorway traffic.
- 4.9 After Hours Work: If, in the course of a job, the work to be done falls outside of normal working hours, WAIHI FARM & INDUSTRIAL may charge additional fees. If it has been arranged as a call-out, call-out fees will be applied. If not, additional fees will be applied to cover the overtime rates.

### **5. SITE ACCESS AND RISK**

- 5.1 The Client shall ensure that WAIHI FARM & INDUSTRIAL has clear and unimpeded access to the Client's Site to complete the Contract.
- 5.2 Any Services undertaken by WAIHI FARM & INDUSTRIAL at the Client's Site are performed solely at the Client's risk and WAIHI FARM & INDUSTRIAL shall not be liable for any loss or damage to property at the Client's Site regardless of whether the property is owned by the Client.
- 5.3 WAIHI FARM & INDUSTRIAL may maintain its own public liability insurance until its Services are completed. Notwithstanding this the Client is responsible for maintaining its own insurance at all times.

### **6. PROTECTION OF EQUIPMENT**

- 6.1 If WAIHI FARM & INDUSTRIAL leaves Equipment at the Client's Site in performing its Services, or it hires Equipment to a Client, and all or some of the Equipment is stolen, lost, damaged or destroyed then any costs incurred in repairing, maintaining or replacing the Equipment (as applicable) shall be at the Client's expense. Any replacement of Equipment is to be undertaken on a like-for-like basis.

### **7. DAMAGE OR LOSS OF GOODS**

- 7.1 The Client shall be solely responsible for ensuring that any Equipment hired to it remains in working condition and is insured for its full value against all causes including loss or damage by fire and theft. If the Equipment is lost, damaged, or destroyed, the Client agrees to make a claim against the insurance policy with respect to the loss.
- Version 1 – April 2022 © WAIHI FARM & INDUSTRIAL & INDUSTRIAL SERVICES 2022 LIMITED
- 3 damaged or destroyed goods, and to immediately pay the proceeds received to WAIHI FARM & INDUSTRIAL. The Client will remain liable to WAIHI FARM & INDUSTRIAL for any shortfall in the insurance proceeds.
- 7.3 Should the Client fail to meet the terms set out in clause 7.1, WAIHI FARM & INDUSTRIAL reserves the right to cancel any further work for the Client until reimbursed and may bring a claim against the Client for any loss or expenses suffered as a result of the Client's action/s or omission/s.

### **8. ACCURACY OF INFORMATION FROM CLIENT**

- 8.1 WAIHI FARM & INDUSTRIAL shall be entitled to rely on any information provided by the Client in relation to carrying out the Contract including, without limitation, timeframes, measurements, quantities, plans, specifications and the location of underground services.
- 8.2 WAIHI FARM & INDUSTRIAL shall not be liable for any loss, damages, costs and/or expenses incurred as a result of the provision of inaccurate information by the Client.

### **9. PAYMENT**

- 9.1 If the Client has been sent an invoice, payment is due as per the payment date on the invoice. Once the job is complete, the Client will be sent a final invoice by email. The Client must let WAIHI FARM & INDUSTRIAL know before work commences if they would prefer an invoice to be mailed, as the default communication is email. If the payment date is not specified, payment for WAIHI FARM & INDUSTRIAL is due on the 20th of the month following the invoice.
- 9.2 For call-out jobs and emergency jobs, payment may be required up front at the discretion of WAIHI FARM &

### **INDUSTRIAL**

- 9.3 Some jobs will require a deposit before work commences, at the sole discretion of WAIHI FARM & INDUSTRIAL. If a deposit invoice is sent and remains unpaid before the work commences, WAIHI FARM & INDUSTRIAL reserves the right to halt work until payment is made. WAIHI FARM & INDUSTRIAL also reserves the right to cancel the contract entirely if payment is late or delayed.
- 9.4 Progress invoices are claims for work done on site, before the entire job is completed. This covers labour and materials for work done to date. The cost of materials and the amount of time spent on your job will dictate whether the Client will be sent progress invoices. As part of these terms, the Client accepts to pay these progress invoices when they are due and understands that payment cannot be withheld for any reason. WAIHI FARM & INDUSTRIAL reserves the right to stop work if progress payments have not been made.
- 9.5 Discounts applied to your account are administered at WAIHI FARM & INDUSTRIAL's discretion. Discounts may be revoked, and the full amount may be charged to the Client if an invoice remains unpaid for more than 20 days or any other agreed date.
- 9.6 Should the Client need to discuss any aspect of payment, or are dissatisfied with the invoice, they must contact WAIHI FARM & INDUSTRIAL immediately.
- 9.7 Part payment of an account shall not amount to satisfaction of the whole account unless, prior to the act of making the part payment, WAIHI FARM & INDUSTRIAL agrees in writing that part payment will be accepted in full satisfaction of the account.

### **10. DEFAULT**

- 10.1 If payment remains outstanding for over 20 days from the invoice due date a late fee of \$100 may be added to the Client's account. WAIHI FARM & INDUSTRIAL also reserves the right to charge 5.5% compounding interest on a monthly basis for overdue accounts. Debt collection costs may be added to invoices that remain outstanding for over 20 days from the due date.
- 10.2 In the event that a payment is not made by the due date WAIHI FARM & INDUSTRIAL may, in its sole discretion, suspend the completion of any Services for the Client but failure to do so shall not negate any other rights and/or remedies of Waihi farm. WAIHI FARM & INDUSTRIAL will not be liable to the Client for any loss or damage the Client suffers if WAIHI FARM & INDUSTRIAL suspends its work under this clause.
- 10.3 Should the Client default in payment or be placed in receivership, liquidation, declared bankrupt, or otherwise become insolvent, then in addition to any other rights and/or remedies of WAIHI FARM & INDUSTRIAL, it may demand immediate payment of all amounts then unpaid and cancel the completion of any existing Contract for Service with the Client.
- 10.4 Any costs and expenses incurred by WAIHI FARM & INDUSTRIAL in enforcing its rights under these terms and conditions of trade, including debt collection agency fees, and legal fees as between solicitor and client, shall be recoverable from the Client.
- 10.5 The Client indemnifies WAIHI FARM & INDUSTRIAL from and against all costs and disbursements incurred by WAIHI FARM & INDUSTRIAL in recovering any money owing to it.

### **11. SET OFF**

- 11.1 WAIHI FARM & INDUSTRIAL may, in its sole discretion, allocate any payment received from the Client towards any invoice that WAIHI FARM & INDUSTRIAL determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated.

### **12. RETENTION OF TITLE**

- 12.1 Ownership and legal title in any of WAIHI FARM & INDUSTRIAL's Equipment located at or on the Client's Site shall remain the ownership of WAIHI FARM & INDUSTRIAL regardless of whether it is attached, fixed, inseparable or indistinguishable from other equipment at the Client's Site.
- 12.2 If the Client is in default under the Contract, WAIHI FARM & INDUSTRIAL shall be entitled to remove from the Client's Site, any Equipment it has supplied and the Client authorises WAIHI FARM & INDUSTRIAL to enter upon the Client's Site at any time to recover the Equipment pursuant to this clause.

### **13. PERSONAL PROPERTY SECURITIES ACT 1999**

- 13.1 In entering the Contract for Service the Client acknowledges and agrees that the Contract for Service creates a security agreement between WAIHI FARM & INDUSTRIAL and the Client for the purposes of the Personal Property Securities Act.
- 13.2 The Client acknowledges and agrees that WAIHI FARM & INDUSTRIAL has a specific security interest in any

Equipment which may be supplied to the Client and/or located at the Client's Site.

13.3 WAIHI FARM & INDUSTRIAL may protect its interests by registering and maintaining a financing statement(s) on the Personal Properties Securities Register. The Client waives its right to receive a copy of any verification statement received by Road Safe.

13.4 The Client undertakes to sign any documents and/or provide further information, such information to be complete, accurate and up-to-date in all respects, which WAIHI FARM & INDUSTRIAL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

#### 14. CANCELLATIONS

14.1 Appointments may be rescheduled free of charge. If the Client needs to cancel their appointment, please provide us with at least 24 hours' notice. A cancellation fee may apply to appointments that are not cancelled within 24 hours of the appointment.

#### 15. LIMITATION OF LIABILITY

15.1 WAIHI FARM & INDUSTRIAL shall not be liable for any loss of profit or indirect and/or consequential loss (whether arising under statute, contract, negligence or otherwise) arising out of the Contract.

15.2 In the event that WAIHI FARM & INDUSTRIAL is found liable for loss for Services provided under the Contract, WAIHI FARM & INDUSTRIAL's liability shall not exceed the price of the Services provided under the Contract.

#### 16. MANUFACTURER WARRANTY

16.1 WAIHI FARM & INDUSTRIAL shall not be bound by any term, condition, representation or warranty given by the manufacturer of any Equipment used in the provision of its Services.

#### 17. PRIVACY ACT 1993

17.1 The Client authorises WAIHI FARM & INDUSTRIAL to collect, retain and use any information about the Client for the purpose of assessing the Client's credit worthiness, enforcing any rights under the Contract and marketing its Services.

17.2 The Client authorises WAIHI FARM & INDUSTRIAL to disclose any information obtained to any person for the purposes set out in clause 17.1.

17.3 Where the Client is a natural person the authorities under clauses 17.1 and 17.2 are authorities or consents for the purposes of the Privacy Act 2020.

17.4 The Client shall have the right to request a copy of the information held by WAIHI FARM & INDUSTRIAL about the Client and the right to request WAIHI FARM & INDUSTRIAL to correct any incorrect information about the Client.

#### 18. CONSUMERS GUARANTEES ACT 1993

18.1 The parties agree the Services provided under this Contract are provided in trade and they contract out of the provisions of the Consumer Guarantees Act 1993.

#### 19. COMPLIANCE WITH LAWS

19.1 WAIHI FARM & INDUSTRIAL will comply with any laws, regulations, bylaws, rules and standards that are applicable to the Services it provides to the Client including but not limited to the Health and Safety at Work Act 2015.

19.2 The Client acknowledges and accepts that WAIHI FARM & INDUSTRIAL obligations under clause 19.1 may cause an increase in the cost of WAIHI FARM & INDUSTRIAL's Services. Should this occur WAIHI FARM & INDUSTRIAL will notify the Client of the increase in cost and its cause and shall add the cost increase to the Client's invoice.

#### 20. HEALTH AND SAFETY

20.1 The Client is responsible for undertaking its own health and safety policies, procedures and program at the Client's Site.

20.2 The Client acknowledges and accepts WAIHI FARM & INDUSTRIAL has its own health and safety policies and, if requested, the Client warrants that it will review these before WAIHI FARM & INDUSTRIAL undertakes Services for the Client. The Client further warrants that it will, if requested, comply with WAIHI FARM & INDUSTRIAL health and safety policies and take all practicable steps to uphold these at all times. The Client indemnifies WAIHI FARM & INDUSTRIAL from and against any fines or penalties WAIHI FARM & INDUSTRIAL incurs as a result of the Client, or any Person the Client employs or contracts with, failing to comply with WAIHI FARM & INDUSTRIAL's health and safety policies.

20.3 The Client warrants that it will ensure that only authorised people have access to the Client's Site while WAIHI FARM & INDUSTRIAL is undertaking its Services and that any authorised people will be supervised during this period of Access.

#### 22. FORCE MAJEURE

22.1 WAIHI FARM & INDUSTRIAL shall not be liable for any default under the Contract for Service due to any act of God, terrorism, war, pandemic, strike, lock out, industrial action, flood, storm or other event beyond its reasonable control.

#### 23. MISCELLANEOUS

23.1 WAIHI FARM & INDUSTRIAL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

23.2 No waiver by WAIHI FARM & INDUSTRIAL in respect of any breach of the Contract for Service shall operate as a waiver in respect of any subsequent breach.

23.3 If any clause(s) of these terms and conditions of trade shall be declared invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining clauses shall not be affected, prejudiced or impaired.

23.4 WAIHI FARM & INDUSTRIAL reserves the right to amend these terms and conditions of trade at any time. Any amendment will be incorporated into any existing Contract and take effect from the date on which WAIHI FARM & INDUSTRIAL notifies the Client of such change. The Client will be deemed to have accepted such amendment if the Client makes a further request to WAIHI FARM & INDUSTRIAL to provide Services.

23.5 These terms and conditions of trade are governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

#### 24. Ownership

You agree that Title in any goods supplied is reserved by us until receipt of full payment. You understand and accept that we have the right under the Liens Contract and Commercial Law Act 2017 to retain possession of goods until charges are paid. We are entitled (for ourselves or through any agent or employee) to come on to any land where the goods are stored or installed to uplift and remove any goods supplied, and to sell those goods if necessary to recover unpaid monies. No responsibility for any loss is accepted by us in this eventuality. We may also register title to all our present and after-acquired property including but not confined to goods supplied by us and itemised on a tax invoice, and/or services supplied by us, and the proceeds from those goods supplied in whatever form they may be in against your name on the Personal Property Security Register (PPSR). You agree that all Fittings, Hardware and Joinery supplied are designed to be removable and so these items form part of the fit out not the building and are covered by our PPSR registration. You agree that in the event where you are holding retentions on behalf of us we understand that it is a legal requirement that you set those amounts aside and agree that we have the right to register an interest in that retention on the PPSR and that we will come ahead of any other security. You agree that until payment is made for the goods and services provided, you grant an equitable interest in your land on which the goods and services were carried out and affixed, which interest entitles us to register a caveat against your land. You waive your right to receive a copy of the PPSR verification statement. You understand that payments will be allocated against labour components of invoices first.