

## TERMS OF SERVICE

Version Date: 1 June 2024

### 1. Acceptance of these Terms

**1.1 How these Terms Apply** You are taken to have exclusively accepted and are immediately bound, jointly and severally (where there is more than one purchaser), by these terms of service when any one of the following occurs:

- click accept or email confirmation of your acceptance of any Quote issued by us for Tradie Terms® Templates and/or Services; or
- place an order for any **Tradie Terms® Templates** and/or Services from us via our **Template Store**; or
- accept a download or electronic transmission of any Tradie Terms® Templates and/or Services from us,

and together these terms apply in conjunction with any specific exclusions or additional terms specified in any quote.

### 2. Our Contract

**2.1 Our Contract** Your acceptance of the Quote and these general terms together constitute our agreement with you (this **Contract**). This Contract governs the agreement between **Tradie Terms®, a trading name of SCW Consulting Limited** a company incorporated in New Zealand under company number 7659640, and its affiliates and related entities together with any contractor, employee, assignee, agent, transferees (referred to as **we, our** or **us**) and **you**, the named customer in the Quote, in respect of the Tradie Terms® Templates and/or Services.

### 3. Glossary

**3.1 Confidential Information** Means all confidential information, non-public or proprietary information, including intellectual property, technical, commercial, financial or other information, exchanged between either one of us or known to either one of us before, on, or after the date any one or more of the Tradie Terms® Templates and/or Services commences.

**3.2 Customer or You** Means a purchaser of any Tradie Terms® Templates and/or Services as specified in any invoice, order, quote or any other document. If the purchaser comprises more than one person, each of those persons' liability and agreement is joint and several.

**3.3 Information Content** Means any online or electronically published information that is included within any Tradie Terms® Templates and which is free to download, view or browse and includes:

- Presentations
- Handouts
- Recordings, videos, audio files
- Blogs
- Transcripts

**3.4 Services** means any advisory, consulting or training service supplied by us to you (but to avoid doubt, excludes any sale of any Tradie Terms® Templates).

**3.5 Tradie Terms® Templates** means any materials supplied by us to you in connection with the Services and includes, without limitation, the following:

- Templates (including terms of trade templates, legal templates, tender templates and business templates)
- Workbooks
- Course guidance documents
- Any other materials or outputs supplied in connection with the Services.

**3.6 Template Store** means our online template store to purchase **Tradie Terms® Templates** as a digital download product.

**3.7 Working Day** Means a day on which banks are ordinarily open and excludes a Saturday, a Sunday or a public holiday in New Zealand. Any other reference to a 'day' shall mean a calendar day

### 4. No Professional or Legal Advice

**4.1 No professional or legal advice** You acknowledge and accept that your use or purchase of any Tradie Terms® Templates and/or Services does not constitute professional or Legal advice.

**4.2 Tradie Terms® is not a law firm** You acknowledge and accept that we are not a law firm and no solicitor-client relationship is formed when you purchase our contract templates and are not a substitute for or constitute professional legal or other professional advice.

### 5. Using Tradie Terms® Templates

**5.1 Licence to use Tradie Terms® Templates By** accessing, using, downloading or viewing our Tradie Terms® Templates, we grant you a non-exclusive, royalty-free, revocable license to use the Tradie Terms® Templates for your own business or personal use only.

**5.2 Prohibition on sharing** You may not assign or transfer the Tradie Terms® Templates to any other person without our express written consent. Where you share any Tradie Terms® Templates with your advisors, we do not grant them a licence to re-use them, only to

install, load or implement them for your business purposes only. We reserve the right, in our sole discretion, to accept or refuse to provide the Tradie Terms® Templates to you where we consider there is a risk of breach of this clause. In that event, a refund for the purchase price will be made.

**6.3 No guarantees from us regarding fitness for purpose** You accept and acknowledge that whilst we confirm that our Tradie Terms® Templates are authored by qualified legal personnel for the country, territory or state for which they are offered or sold, we do not provide any warranties or guarantees regarding the Tradie Terms® Templates and make no representations that they are suited to your specific needs.

### **7.No Commercial Use or Sharing of our Tradie Terms® Templates or Information Content**

**7.1 No Commercial Use or Sharing** You may **not** copy, reproduce, transmit electronically or otherwise use, on-sell, sub-licence or circulate Tradie Terms® Templates or Information Content in any way in whole or in part for the purpose of commercial gain or other purpose at any time.

**7.2 Audits regarding infringement** We reserve all rights, from time to time and at our sole discretion, to perform online audits using available third-party technology and search tools to establish if any breach of these terms and infringement of our intellectual property rights has occurred. This is subject to applicable privacy and cyber security laws which we shall not breach in the performance of such audits.

### **8. Confidentiality**

**8.1 How we will treat confidential information** We agree to treat as confidential, all Confidential Information exchanged in the course of providing our Tradie Terms® Templates to you.

**8.2 Neither party will disclose confidential information** Neither of us may disclose any Confidential Information of the other party to a third party with the exception of information:

- which is in or becomes part of the public domain (unless it has entered the public domain by breach of this clause); or
- which is required to be disclosed by law; or
- which is disclosed to a third party with the written consent of the party to whom the information belongs.

**8.3 Confidentiality continues** Our duty of confidentiality to each other is ongoing and continues after the completion of any Tradie Terms® Templates and/or Services.

### **9. Intellectual Property rights**

**9.1 Our Intellectual Property** The Tradie Terms® Templates contain intellectual property owned by us, including, without limitation, trademarks, copyrights, proprietary information, designs, patents and other intellectual property rights, as well as the business name, logo, all designs, text, videos, audio files, graphics, other files, and software.

**9.2 No Transfer of Rights** Your use of, purchase or download of any Tradie Terms® Templates and access to any Information Content does not grant or transfer any rights, title or interest to you in relation to Tradie Terms® Templates or the Information Content.

**9.3 Limited Licence** For any Tradie Terms® Templates or Information Content that are downloaded by you or to which you are granted access, we grant you a **limited, personal, non-exclusive, non-transferable license to use such content or services for your own personal and internal business use.**

**9.4 No Infringement by You** Except as otherwise provided, you acknowledge and agree that you have no right to modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, sell, create derivative works of, enhance or in any way exploit any of the Tradie Terms® Templates or Information Content in any manner, except for modifications in completing the Tradie Terms® Templates or Information Content for your authorised use.

**9.5 No Removal of Copyright Notices** You shall not remove any copyright notice from any of the Tradie Terms® Templates or Information Content. Doing so may infringe on our intellectual property rights.

**9.6 Competitors Prohibited** You are expressly prohibited from sharing the Tradie Terms® Templates or our Information Content, in any way that competes with our business.

**9.7 Indemnity for breach** If you breach these Intellectual Property terms, we will hold you responsible for any loss, damage or expense, however arising, whether direct or indirect and/or whether present, unascertained, future or contingent we suffer, and hold you accountable for any profits that you may make from non-permitted use.

## 10. Consumer Guarantees

**10.1 Consumer Guarantees** Our Tradie Terms® Templates and Services are available to customers in trade or business only and to the extent permitted by law, the Consumer Guarantees Act 1993 (New Zealand) (CGA) does not apply.

**10.2** If you a Customer located outside of New Zealand, no corresponding consumer laws shall apply.

## 11. Warranties and Disclaimers

**11.1 Exclusion of our Liability** To the extent permitted by law, all warranties, representations and guarantees (whether express, implied or statutory) are excluded, including without limit, suitability, fitness for purpose of the Tradie Terms® Templates and/or Services.

**11.2 No Guaranteed Outcomes** Whilst we can project an average outcome based on our experience by applying any general advice contained in our Information Content, any outcome is indicative only and is not guaranteed.

**11.3 No liability for Losses** We will not be liable for any damage, loss or expenses, or indirect losses or consequential damages of any kind, including loss of opportunity, profit or otherwise suffered or incurred by you in connection with any purchase of the Tradie Terms® Templates or use of the Information Content.

**11.4 Remedies if we are Liable** If any legislation implies any condition or warranty and we cannot rely on the clauses above, then to the extent permitted by law our liability for breach of all such conditions or warranties will be solely limited to a refund of the fees paid by you for the Tradie Terms® Templates to which our breach relates. **We are not liable to re-perform Services or re-offer the Tradie Terms® Templates unless expressly agreed.**

**11.5 Your Acknowledgements** You acknowledge and agree that you use the Tradie Terms® Templates at your own risk.

**11.6 No Implied Warranties** You agree that, to the maximum extent permitted by law, these Terms exclude all terms, conditions and warranties implied by statute, in fact or on any other basis, except to the extent such terms, conditions and warranties are fully expressed in these Terms.

## 12. Indemnity from You to Us

**12.1 Indemnity from you to us** To the maximum extent permitted by law, you agree to indemnify us, and hold us and our related entities, affiliates, officers, agents and employees harmless, against any loss, liability, claim or demand (including reasonable legal fees on a full indemnity basis), made by any third party due to or arising from your use of this Site in violation of these Terms or due to any breach of these Terms or any applicable laws by you.

**12.2 Indemnity continues** This indemnity is a continuing obligation, independent from the other obligation under these Terms, and continues after these Terms end. It is not necessary for us to suffer or incur any liability before enforcing a right of indemnity under these Terms.

## 13. Updates to Information Content

**13.1 Information Content** is subject to change without notice. We do not undertake to keep our Information Content up-to-date, and we are not liable if any Information Content is inaccurate or out-of-date or does not meet your specific purposes or needs.

## 14. Online Payments

**14.1 Payment gateway** We use the Stripe Payment Gateway for our online card transactions. Stripe processes online credit card transactions securely for thousands of merchants globally, providing a safe and secure online payment service. Payments are processed in real-time.

**14.2 No access to card details** We do not have access to full card numbers. All applicable debit or credit card payment is secured by Stripe. Please visit [www.stripe.com/nz](https://www.stripe.com/nz) for more information.

**14.3 Security** Stripe has been audited by a PCI-certified auditor and is certified to [PCI Service Provider Level 1](#). This is the most stringent level of certification available in the payments industry. To accomplish this, we use the best-in-class security tools and practices to maintain a high level of security at Stripe. Learn more about the security of using Stripe to handle your payments at <https://stripe.com/docs/security/stripe>.

**14.4 Currency** All prices are in New Zealand Dollars, and we charge your credit or debit card in New Zealand dollars. If you live outside New Zealand, the New Zealand amount will be charged to your card using your provider's current exchange rates.

**14.5 Exchange and transaction fees** Please remember that buy/sell exchange rates can be different depending on when your card provider processes the transaction, so the amount that appears on your card statement may be slightly different to the converted invoiced amount. Card companies may also charge international payment fees and/or commission for selling you foreign currency. Please contact your card provider directly for their terms and conditions.

**14.6 Additional Payment Methods** We may set out or offer several payment methods on this Site. The payment method you choose may be subject to additional terms and conditions imposed by the applicable third-party payment processor.

**14.7 Failed Card Payments** Where a repeating subscription transaction or online card payment fails, we reserve all rights to suspend or withhold transmission of the Tradie Terms® Templates until a successful payment has been made.

## 15. Dispute Resolution

**15.1 When this Section Applies** The parties agree that any dispute, controversy, or claim arising between the parties out of or in connection with these Terms, or in relation to any question regarding the existence, breach, termination, or invalidity (**Dispute**) will only be resolved by following the process described in this section.

**15.2 Send a Dispute Notice** Where a Dispute arises, either party may give notice to the other (by email) to set out the details of the Dispute (**Dispute Notice**).

**15.3 Confirm Receipt** The party who receives a Dispute Notice (**Recipient**) must acknowledge receipt of it within **forty-eight (48) hours**.

**15.4 Consult to Resolve** Both parties will promptly attempt to resolve the Dispute by consultation and discussion at the lowest practicable level of escalation first. It must then include more senior management if the Dispute cannot be resolved (if senior management is available).

**15.5 Where a Resolution Cannot Be Found** Where the parties cannot agree to resolve the Dispute between themselves, they can use a third-party forum to assist.

**15.6 Parties Can use Mediation** If the Dispute is not resolved within **ten (10) Working Days** (or any longer period agreed by the parties) of receipt of the Dispute Notice by the Recipient, either party may submit the dispute to be resolved by mediation by giving notice to

the other party. This notice must be in writing by email or registered letter only and must be addressed to the other party.

**15.7 Location of Mediation** The mediation will be conducted before a single mediator at a location to be agreed by the parties, on the terms of the Resolution Institute Standard Mediation Agreement (NZ version). The mediator will be agreed between the parties or, failing agreement, within **five (5) Working Days** of receipt of a Dispute Notice, appointed by the Chair for the time being of the Resolution Institute or his/her nominee.

**15.8 Services to Suspend** We will suspend performance of the Services under these Terms until the Dispute has been resolved.

**15.9 Interlocutory Relief Permitted** Nothing in this section will prevent either party from seeking urgent interim relief from a court of competent jurisdiction.

**15.10 Deemed Notice** Any written notice given under these Terms shall be deemed to have been given and received as follows:

- by handing the notice to the other party in person; or
- by leaving it at the registered address of the other party as stated in these Terms or any Account or registration profile; or
- by sending it by registered post to the address of the other party as stated in these Terms or any Account or registration profile; or
- if sent by email, to the other party's last known email address.

## 16. Governing Law

**16.1 Law** The contract created under these Terms are governed by the laws of New Zealand.

**16.2 Jurisdiction** You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in New Zealand and any courts entitled to hear appeals from those courts and waive any right to object to proceedings being brought in those courts.

## 17. Testimonials and Reviews

**17.1 We can re-post reviews you leave** Where you leave us a review, you accept and acknowledge that we may pre-post, copy or repurpose this for our marketing and promotional purposes.

**17.2 Testimonials** Where you consent to supply us with a testimonial, you are granting us permission to publish this, including your image, name, business name and logo across any social media channels or printed materials that we choose to use.

## **18. Miscellaneous**

**18.1 Severability** If and to the extent any provision or part of a provision is illegal or unenforceable, such provision or part of a provision will be severed from the contract formed under these Terms and will not affect the continued operation of the remaining provisions of the contract under these Terms.

**18.2 No Assignment** You will not assign or otherwise transfer your rights or obligations under these Terms.

**18.3 Electronic Acceptance** The parties agree that any legal requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017. In this clause the term “legal requirement” has the meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.

## **End of Terms**