On Time Sparkys - TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

We supply all Goods and/or Services subject to the following terms and conditions:

1. DEFINITIONS

1.1. In this agreement:
“Company”, “we”, “our”, "Seller" and “us” means River City Properties Trading as On Time Sparkys, our assigns and successors, and where the context permits shall include our employees and subcontractors.
“Confidential Material” means:

(a) all information (whether oral or written) and other material relating to the Company’s business, operations, methods, know-how, ideas, systems, data, records, finances, customers, employees, goods, or services which we make available or have previously made available to you; or
(b) any report or material which we produce as a direct or indirect result of any work or services that we carry out for you and anything that you derive from this information and material, but excludes anything which is generally available to the public (other than through any direct or indirect breach of this agreement).

“Customer”, “you” and “your” means the customer named in the Order.
“Goods” means any goods or materials supplied by the Company to the Customer from time to time.
“GST” means Goods and Services Tax as defined in the Goods and Services Tax Act 1985.
“Order” means an order for Goods and/or Services made by the Customer to the Company by way of a telephone call, a document, or an order made electronically.
“PPSA” means the Personal Property Securities Act 1999.
“Services” means the services supplied by the Company (or any sub-contractor of the Company) to the Customer from time to time.
“Services Interruption Event” means an interruption to the Services caused by any event that is outside of the Company’s reasonable control or your failure to carry out or perform any obligation under this agreement.
“Warranty Period” has the meaning set out in clause 11.2.
“Workmanship” means the Services performed by the Company (or any sub-contractor of the Company) under this agreement.
“Workmanship Guarantee” has the meaning set out in clause 11.2.

2. ORDER AND ACCEPTANCE

2.1. If you:
a.make an Order;
b.send us any instructions or request for the supply of Goods or Services;
c.accept delivery of any Goods or supply of any Services;
d.make any payment in respect of any Goods or Services, or perform any obligation under this agreement or under any Order;
e.make any application for credit in respect of any Goods or Services,
then you shall be taken to have agreed to and accepted the terms and conditions in this agreement.
2.2. We are not bound to proceed with the supply of any Goods or Services unless and until we have accepted an Order either verbally or in writing. The supply of any Goods or Services by us may be subject to certain conditions (such as, by way of example only, payment of a deposit), and any such supply will be conditional on satisfaction of those conditions.
2.3. We are not obliged to accept any application for credit, and may refuse or withdraw credit facilities at any time. Any provision of credit may be subject to satisfaction of certain conditions (such as, by way of example only, the grant of a guarantee or other security to us). The Customer authorises the Company to obtain such information as it may require from any source to determine the Customer’s credit worthiness and to determine credit limits. The Company may alter the credit limit that it has given to the Customer from time to time on written notice.

3. PRICE AND PAYMENTS

3.1. The price for the Goods and/or Services is the amount that is invoiced by us, or confirmed by us (either verbally or in writing), or stated in any quotation given by us.
3.2. All prices given are exclusive of GST unless expressly stated otherwise.
3.3. Any estimated price given by us is to be treated as an estimate only. We will not be bound by any estimated price given to you until we have confirmed such price to you (either verbally or in writing).
3.4. Any quotation given by us in relation to the Goods and/or Services is valid for the period stated, or if no period is stated, then it is valid for thirty (30) days from the date the quotation has been provided.
3.5. The Company reserves the right to change the price of the Goods or Services:
a.to take into account any change in the requirements, plans or specifications for such Goods or Services; or
b.if the Order is changed; or
c.where additional Goods or Services are required due to the discovery of hidden or identified difficulties (including, but not limited to, poor weather conditions, poor access to the site, unavailability of machinery, unsafe conditions, work by any third party not completed, hidden building defects, change of specifications, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and/or wiring in walls) after commencement of the supply of Goods or Services; or
d.if there are increases to the Company in the cost of labour, subcontractors’ services or Goods beyond the Company’s control.

3.6. In respect of any invoice that is issued by the Company for the Goods and/or Services, the Customer shall make all payments by the due date set out in the invoice unless otherwise arranged in advance and confirmed in writing by the Company. The Customer must notify the Company in writing within five (5) days of receipt of any disputed invoice. The notification must quote the relevant invoice number and must include all the necessary details of the reason the invoice is being disputed. Should the Customer fail to notify the Company of any dispute within five (5) days of receipt of the invoice, the Customer shall be deemed to have accepted the invoice and shall pay that invoice on or before the due date.
3.7. In respect of any payment claim that is served on the Customer by the Company for the Goods and/or Services, the provisions of sections 19 to 24A (inclusive) of the Construction Contracts Act 2002 will apply.
3.8. If any payment is not made on the due date, then (in addition to any other rights the Company may have) the Customer will be in default and interest will be charged on a calendar monthly basis on all outstanding amounts at a rate of 2.5% from the date on which the payment was due until the actual date of payment. Any expenses, disbursements and other costs (including, but not limited to, solicitors fees or debt collection agency fees) incurred by the Company in the event of Customer default are payable by the Customer.

4. INSURANCE

4.1. The Company shall maintain a public liability insurance policy in respect of loss or damage to any property or injury or death or illness to any person in connection with the execution of the Services.
5. ACCURACY OF CUSTOMER'S PLANS AND MEASUREMENTS
5.1. The Company may rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that if any of the information provided by the Customer is inaccurate or there is any omission in the information provided by the Customer, the Company accepts no responsibility for any loss, damage or cost resulting from such inaccuracy or omission.
5.2. If the Customer gives the Company information relating to measurements and quantities of Goods required in completing the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities before the Company places an order based on these measurements and quantities.

6. ACCESS

6.1. The Customer shall ensure that the Company always has unimpeded and lawful access to the site or property where the Services are being carried out. The Company shall not be liable for any loss or damage to the site or property, or to the surrounding areas (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) except due to the negligence of the Company.

7. UNDERGROUND LOCATIONS

7.1. Prior to the Company commencing any Services, the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the location. The underground mains and services the Customer must identify include, but are not limited to, telephone cables, fibre optic cables, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigations pipes and oil pumping mains.
7.2. Whilst the Company will use all reasonable endeavours to avoid damage to any underground services, the Customer agrees to indemnify the Company in respect of any and all liability, claims, loss, damage, cost, or fines the Company incurs in connection to services that are not precisely located and notified by the Customer pursuant to this clause.

8. TITLE AND RISK

8.1. All risk in the Goods shall pass when the Goods are delivered to the site or property notified by the Customer (notwithstanding our retention of title pursuant to clause 8.2. below).
8.2. Title in the Goods shall not pass to you until payment for the Goods and all other amounts owing by you to us has been made in full.
8.3. You grant us a security interest in the Goods, and the proceeds of such Goods, as security for all amounts owing to us.
8.4. The Customer shall:
a.sign any further document and provide any further information (which the Customer warrants to be complete, accurate and up to date in all respects) that the Company may reasonably require to register a financing statement on the personal property securities register; and
b.give the Company no less than fourteen (14) days written notice of any change to the Customer's name or other details (including, but not limited to, changes in address, trading name or business practice).
8.5. The Customer agrees that sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA do not apply to this agreement.
8.6. The Customer waives its rights as debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA, and further waives its right to receive any notice, details or other document from the Company under section 148 of the PPSA.
8.7. The Customer agrees that, where the Company has rights under this agreement in addition to those in Part 9 of the PPSA, those rights will continue to apply.
8.8. The Customer grants to the Company, power of attorney to sign all documents required to perfect the Company's security interest in the Goods.
8.9. If the Goods are attached, fixed or incorporated into any site or property of the Customer, by way of any manufacturing or assembly process, title in the Goods shall remain with the Company until the Customer has made payment of all amounts due to the Company, and where those Goods are mixed with other property so as to be part of or a constituent of any new products,

title to these new products shall be deemed to be assigned to the Company as security for the full satisfaction by the Customer of the full amount owing by the Customer.
8.10. The Customer gives irrevocable authority to the Company to enter any site or property that is owned or occupied by the Customer on which Goods are situated at any reasonable time after default by the Customer or before default if the Company believes a default is likely to occur in order to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. To the fullest extent permissible by the law, the Company shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action.
8.11. The Company may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale if any (after deduction of all amounts due to the Company and the costs of repossession, storage, selling and other associated costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value less such sum as the Company reasonably determines on account of wear and tear.

9. CONSTRUCTION CONTRACTS ACT 2002

9.1. The Customer acknowledges that:

(a) The Company has the right to suspend the Services within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer and:
  (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer;
  (ii) a schedule amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
  (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Company by a particular date, and the Company has given written notice to the Customer of its intention to suspend its performance of the Services.

(b) If the Company suspends the Services, it:
  (i) is not in breach of this agreement or any Order; and
  (ii) is not liable for any loss or damage whatsoever suffered by the Customer or by any person claiming through the Customer; and
  (iii) is entitled to extensions of time to complete the Services; and
  (iv) retains its rights under this agreement including the right to terminate this agreement and any Order, and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.

(c) If the Company exercises the right to suspend the Services, the exercise of that right does not:
  (i) affect any rights that would otherwise have been available to the Company; or
  (ii) entitle the Customer to exercise any rights that may otherwise have been available to the Customer as a direct consequence of the Company suspending the Services.

10. CONSUMER GUARANTEES ACT 1993

10.1. Where the Company supplies the Goods to the Customer for the Customer's use in a business for the purpose of the business, the Customer agrees that the Consumer Guarantees Act 1993 does not apply.

11. WARRANTIES

11.1. The Company warrants that the Services will conform to the Order.
11.2. The Company will repair or make good any defects in its Workmanship ("Workmanship Guarantee") which arise within one year following completion of the Workmanship for which the defect is claimed ("Warranty Period"). The Workmanship Guarantee is subject to the following conditions:

(a) the Company is not liable to carry out any remedial work under the Workmanship Guarantee unless we receive written notice from the Customer of the claim within seven (7) days after discovery of the defect;
(b) the Workmanship Guarantee does not apply to the Goods (for which the Customer acknowledges clause 11.3. applies);
(c) the Company's liability in respect of all claims arising from the Workmanship Guarantee will be limited to the labour value of the Workmanship;
(d) the Workmanship Guarantee does not cover any occurrence or event which would normally be covered by public liability insurance or any other form of insurance;
(e) the Workmanship Guarantee does not apply where alterations, repairs or modifications are made by the Customer or any third party to the Services without the knowledge and prior written consent of the Company (and without the Company first having the opportunity to remedy the same to its satisfaction);
(f) the Workmanship Guarantee does not apply to normal wear and tear and the gradual reduction in the operating performance of the Services;
(g) the Workmanship Guarantee does not apply to any issue or damage which is the result of an act or omission by the Customer or any third party;
(h) the Workmanship Guarantee does not apply to any defect in Workmanship that is not notified to the Company within the Warranty Period or where the Customer continues to use the Services (or any part thereof) after the Customer discovered the defect or ought to have reasonably known or discovered the defect;
(i) the benefit of the Workmanship Guarantee is not assignable by the Customer to any other person;

(j) the Workmanship Guarantee does not apply until the Services have been completed in full and the Customer has made all payments owing to the Company.

11.3. In respect of Goods, the manufacturer's warranty shall apply.

11.4. The Customer acknowledges that (except as expressly provided in this agreement):

(a) no representations or warranties about the subject matter of this agreement have been made by, or on behalf of, the Company; and

(b) the Customer has not relied on any representations or warranties about the subject matter of this agreement.

11.5. The Company will not be liable to the Customer for any indirect, special, incidental, consequential, or other similar loss or damage, however caused.

11.6. The maximum liability of the Company in relation to the supply of the Services will not exceed the amount paid by the Customer for such Services.

12. SERVICES INTERRUPTION

12.1. Without prejudice to any other right or remedy of the Company, the parties acknowledge that from time to time a Services Interruption Event may occur and, in that case, such occurrence will delay the Services and will entitle the Company to immediately cease the performance of all or any part of the Services until the Services Interruption Event ends or is remedied (as the case may be).

12.2. The Customer acknowledges that the Company may charge for any costs of recommencing the Services after the occurrence of a Services Interruption Event.

13. CONFIDENTIAL INFORMATION

13.1. You agree to keep the Confidential Material strictly confidential and not use the Confidential Material for any purpose other than for the purpose for which it was supplied, or copy or reproduce any of the Confidential Material in any way except if disclosure is necessary to enable the Services to be used or where we have consented in writing to disclosure.

13.2. On request by us, you will ensure that any Confidential Material (including any copies) that you possess or control is returned to us or is destroyed.

14. RESOLVING DISPUTES

14.1. The Company and the Customer will use all reasonable endeavours to resolve any dispute between them. If they cannot resolve their dispute by negotiation within a reasonable time, the parties will refer the dispute to mediation which will be conducted in accordance with the Resolution Institute New Zealand Standard Mediation Agreement.

14.2. Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate Court.

14.3. Non-Disparagement and Online Reviews:

The Customer agrees not to publish, post, or make any false, misleading, malicious, or defamatory statements or reviews (whether online, on social media, or otherwise) regarding the Company, its employees, subcontractors, or Services. Where the Customer has a genuine concern or complaint regarding the Services or Goods supplied, the Customer agrees to notify the Company in writing and afford the Company a reasonable opportunity to investigate and remedy the issue in accordance with Clause 11 and Clause 14.1 prior to publishing any public review or commentary.

15. INTELLECTUAL PROPERTY

15.1. The Customer acknowledges that the Company is the sole owner of all intellectual property (including, but not limited to, business know how, ideas, methodologies, routines, systems and processes and the like) relating to or arising, directly or indirectly out of the Services or developed or contributed to by the Company in relation to any information, fault, repair or documentation that is supplied to the Customer or as a result of the Company performing the Services.

15.2. The Customer agrees not to use the Company's trademarks or other intellectual property rights except as expressly authorised by the Company in writing.

16. GENERAL

16.1. This agreement together with all Orders, supersedes all previous agreements, understandings, negotiations, representations and warranties about its subject matter, and embodies the entire agreement between the Company and the Customer about its subject matter.

16.2. The Company may review any of these terms at any time. Any change will take effect on the next transaction following the date on which the Company notifies the Customer of such change.

16.3. The Company may assign to any other person all or any part of the debt owing by the Customer to the Company.

16.4. If any provision of this agreement is unenforceable, that term will be deemed modified to the extent necessary to make it enforceable or if modification is impractical, the provision will be deemed deleted without affecting the remainder of these terms.

16.5. This agreement may only be varied by the written agreement of the Company and the Customer.

16.6. Any notice required to be served by either party shall deemed to have been properly served if left at or posted in a pre-paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been affected when the letter containing such notice is delivered in the ordinary course of post or sent by email to the

email address nominated by the Customer in the Order (deemed received on the day of transmission unless a bounce-back error is received)
16.7. These terms shall be governed by and construed in accordance with the laws of New Zealand.

17. Delivery of Goods and Returns

17.1 At the Seller's sole discretion delivery of the Goods shall take place when:
(a) the Customer takes possession of the Goods at the Seller's address; or
(b) the Customer takes possession of the Goods at the Customer's nominated address.
17.2 At the Seller's sole discretion the costs of delivery may be in addition to the Price and for the Customer's account.
17.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the
Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
17.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
17.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
17.6 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where
due to circumstances beyond the control of the Seller.
17.7 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged
defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods
within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these
provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is
entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
17.8 Goods will not be accepted for return other than in accordance with 17.7 above.
17.9 Returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 17.7; and
(b) the Seller has agreed in writing to accept the return of the Goods; and
(c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
(d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition
as is reasonably possible in the circumstances.
17.10 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the
returned Goods plus any freight

18. PRIVACY ACT 2020

18.1. You consent to the Company collecting, using, and disclosing your personal information for the following purposes:

(a) verifying any information that you give us (or information that we may collect from other sources) with third parties and third-party databases, including Government agencies (NZ Transport Authority, Motor Vehicle Register, PPSR, for example);
(b) carrying out credit checks on you with a credit reporting agency for a purpose of making a credit decision affecting you (including debt collection) or for the requirements of the Anti-Money Laundering and Countering Financing Terrorism Act 2009. This will require us to give your information to the credit reporting agency as well as the credit reporting agency providing information about you to us. (We may also disclose your positive credit information (including repayment history information) to a credit reporting agency). "Debt collection" includes appointing an agent to collect outstanding debts and listing defaults with a credit reporting agency;
(c) checking the Ministry of Justice fines database for any overdue fines you may have. This will require us to give your information to the Ministry of Justice. This check may be carried out by a credit reporting agency, which will require the search results to be disclosed to the credit reporting agency;
(d) verifying any information that you give to us (or information that we may collect from other sources) with third parties and third-party databases for the purposes of fraud prevention or the Anti-Money Laundering and Countering Financing Terrorism Act 2009.

18.2. You authorize any third party to provide your personal information to us for any of the purposes set out in clause 18.1. above.
18.3. Where you have voluntarily given your driver license information, this information may also be disclosed to a credit reporting agency and the Ministry of Justice as part of the checks you undertake with them.

18.4. You understand that if we disclose your personal information to a credit reporting agency, they may hold your information on their credit reporting database and use it for providing credit reporting services and for any other lawful purpose and they may disclose your information to their subscribers for the purpose of credit checking or debt collection or for any other lawful purpose.

19. ACKNOWLEDGEMENT AND ACCEPTANCE OF THIS AGREEMENT

19.1. By signing this agreement or indicating acceptance of this agreement via any digital platform or website the Company may have, the Customer:

(a) acknowledges the terms and conditions specified above; and
(b) agrees they are bound by the terms and conditions specified above; and
(c) gives the necessary approvals, consents, and authorizations under the Privacy Act 2020; and
(d) agrees that this agreement applies to all Goods and Services supplied by the Company.