

MAXIMO Limited– Terms & Conditions of Trade

DISCLAIMER: The Client acknowledges that this document is a summary of key points in regard Maximo's full terms and conditions of trade, and the Client shall read this document in conjunction with Maximo's full terms and conditions of trade.

Maximo's full terms and conditions of trade can be found at <https://maximo.co.nz/resources>

- 1. Acceptance**

The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client accepts the contract for Construction Work and supplies a fully executed version of the full terms and conditions to Maximo. Where the Client is a company, the person giving instruction shall be personally liable as a guarantor of the Construction Work undertaken by Maximo.
- 1.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.**
- 1.4 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.**
- 2. Authorised Representatives**

Unless otherwise limited as per clause 2.2, the Client agrees that should the Client introduce any third party to Maximo as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Construction Work on the Client's behalf and/or to request any variation to the Construction Work on the Client's behalf (such authority to continue until all requested Construction Work have been completed or the Client otherwise notifies Maximo in writing that said person is no longer the Client's duly authorised representative).

In the event that the Client's duly authorised representative as per clause 2.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Maximo in writing of the parameters of the limited authority granted to their representative.
- 3. Errors and Omissions**

The Client acknowledges and accepts that Maximo 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 Maximo 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 Maximo in respect of the Construction Work

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 wilful misconduct of Maximo, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Change in Control**

The Client shall give Maximo not less than seven days prior written notice of any proposed change of ownership of the Client or Infrastructure Owner and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Maximo as a result of the Client's failure to comply with this clause.
- 5. Quotations**

Maximo shall reserve the right to re-measure and re-quote for the Construction Work where the Construction Site is in a varied state from the time of the initial quotation to the time that the Construction Work is being undertaken including, but not limited to, where remedial work is to be performed to compensate for the progressed state of disrepair.

Maximo reserves the right to provide the Client with a re-quote for the Construction Work upon the time that Maximo becomes aware of the progressed state of disrepair.
- 6. Contract Price and Payment**

At Maximo's sole discretion the Contract Price shall be either:

 - (a) as indicated on invoices provided by Maximo to the Client in respect of the Construction Work; or
 - (b) Maximo's quoted Contract Price (subject to clause 6.2) which shall be binding upon Maximo provided that the Client shall accept Maximo's quotation in writing within fourteen days.

Maximo reserves the right to change the Contract Price:

 - (a) if a variation to the Construction Work which are to be supplied is requested; or
 - (b) if a variation to the Construction Work originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Construction Work are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, expose rust, water damage, mould or rot) which are only discovered on commencement of the Construction Work; or
 - (d) in the event of increases to Maximo in the cost of labour or Construction Work which are beyond Maximo's control.

At Maximo's sole discretion a deposit may be required and if requested, shall become due and payable at that time.

Maximo requires on the terms agreed with the Client was represented by the fully executed Contract.

Unless otherwise stated the Contract Price does not include GST
- 7. Provision of the Construction Work**

Subject to clause 7.2 it is Maximo's responsibility to ensure that the Construction Work start as soon as is reasonably possible.

The Construction Work's commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Maximo claims an extension of time (by giving the Client notice) where completion is delayed by an event beyond Maximo's control.

Maximo may undertake the Construction Work by separate instalments.

Any time specified by Maximo for delivery of the Construction Work is an estimate only and Maximo will not be liable for any loss or damage incurred by the Client as a result of delivery being late.
- 8. Risk**

Where Maximo is supplying materials for Construction Work only, all risk for the Construction Work shall immediately pass to the Client on delivery of the materials and the Client must insure the materials of the Construction Work on or before delivery.

Where Maximo gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of products for the repair or undertaking of any Construction Work, and such advice or recommendations are not acted upon then Maximo shall require the Client or their agent to authorise commencement of the Construction Work in writing.
- 8.3 Whilst Maximo shall endeavour to match existing finishes, an exact match cannot be guaranteed due to factors beyond Maximo's control.**
- 8.4 Maximo shall not be held responsible for any damage to the Construction Work caused by other tradesmen, outside agents or heavy vehicles.**
- 9. Dimensions, Plans and Specifications**

All customary industry tolerances shall apply to the dimensions and measurements of the Construction Work, unless Maximo and the Client agree otherwise in writing.

Maximo shall be entitled to rely on the accuracy of any industry specifications and other information provided by the Client.
- 10. Documents and Construction Work Supplied by the Client**

The Client agrees that all materials supplied by the Client or the Client's nominated representative will:

 - (a) be supplied in accordance with all legislative requirements;
 - (b) be suitable for their inclusion into the Construction Work to be provided by Maximo;
 - (c) be completed to Maximo's requirements.

In the event that the Client or the Client's third-party representatives do not comply with Construction Site regulations, Maximo may require the non-compliant party to either leave and/or stay off the Construction site as Maximo may so direct for the duration of the Contract.
- 11. Client's Responsibilities**

It is the Client's responsibility to:

 - (a) ensure that the Construction Site contracted for the Construction Work to be undertaken is available for Maximo as scheduled;
 - (b) have the Construction Site is in an appropriate condition to enable scheduled work to be completed as determined by Maximo; and
 - (c) make Construction Site is available on the agreed date and time.

The Client acknowledges that in the event that **methamphetamine**s or any other toxic substances are discovered in or at the Construction Site that it is the Client's responsibility to ensure the safe removal of the same, and that the Construction Work shall not be carried out until such removal is completed.
- 12. Access**

The Client shall ensure that Maximo has clear and free access to the Construction Site at all times to enable them to undertake the Construction Work.
- 13. Compliance with Laws**

The Client and Maximo shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Construction Work, including any WorkSafe guidelines regarding health and safety laws relating to construction work and any other relevant safety standards or legislation.
- 14. Defects in the Construction Work**

The Client shall inspect the Construction Work upon completion and shall within seven days of completion (time being of the essence) notify Maximo of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.
- 15. Returns**

Maximo may (in its discretion) accept the return of Construction Work and/ or materials thereof, but this may incur a handling fee of ten percent (10%) of the value of the returned Construction Work and/ or materials thereof plus any freight.
- 16. Intellectual Property**

Where Maximo has designed, drawn, written plans or a schedule of the Construction Work, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Maximo, and shall only be used by the Client at Maximo's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Maximo.

The Client warrants that all designs, specifications or instructions given to Maximo will not cause Maximo to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Maximo against any action taken by a third party against Maximo in respect of any such infringement.
- 17. Cancellation**

Without prejudice to any other rights or remedies Maximo may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then Maximo may suspend the Construction Work immediately. Maximo will not be liable to the Client for any loss or damage the Client suffers because Maximo has exercised its rights under this clause.
- 18. 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.

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.

Maximo shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Maximo of these terms and conditions (alternatively Maximo's liability shall be limited to damages which under no circumstances shall exceed the Contract Price of the Construction Work).

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

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.

