

JOHNSTONE AND MASTERS LIMITED AGREEMENT FOR RESIDENTIAL CONSTRUCTION



JOHNSTONE & MASTERS LTD. ROADING AND CONSTRUCTION

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Dated:
Reference: Sealing Quote 0000

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TERMS AND CONDITIONS OF AGREEMENT FOR THE SUPPLY OF GOODS AND SERVICES FOR RESIDENTIAL CONSTRUCTION to the owner or person occupying or intending to occupy the premises wholly or mainly as a dwelling house (the "Occupier")

On engaging Johnstone & Masters Ltd to carry out the works it is agreed that Johnstone & Masters will receive payment of 50% of the quoted value before commencement of work.

At completion of works the remaining invoice amounts will be paid within seven days – no monies will be held by Customer from Johnstone & Masters Ltd.

Personal Guarantee is hereby given to Johnstone & Masters Ltd if whereby debt is not re-paid or incurred, Johnstone & Masters Ltd may should the situation arise claim where lawfully so security of the Occupiers, Agents or Owners possessions.

The parties agree to these terms and conditions of agreement between JOHNSTONE AND MASTERS LIMITED ("Contractor") and the Occupier for the supply of construction, surfacing and paving products and all inventory supplied in residential and civil construction ("Goods") and design, installation and commissioning of Goods or other contracting supplied at an hourly rate or at a quoted fixed cost ("Services") following written instructions or reasonable oral instructions from the Occupier shall apply to any Contractor quotation or tender or order provided by the Occupier and any specifications or drawings nominated as forming part of this agreement between the Contractor and Occupier. These terms and conditions shall prevail and take precedence over any written document or oral message from the Occupier. In the case of conflict or dispute between the parties these terms and conditions shall prevail. Where the Contractor fails to enforce any of the terms and conditions of this agreement or fails in any way to exercise its rights under this agreement the Contractor will not be deemed to have waived these rights with respect to any term or condition or right.

This agreement binds the parties to the provisions of the Construction Contracts Act 2002 ("the Act") for Residential Construction where they apply. The parties cannot contract out of the provisions of the Act.

The Contractor agrees to the following:

1. To provide a tender or quotation excluding GST that will expire after 30 days for the price and description of the Goods or Services but the Contractor may withdraw any quotation or tender before the Occupier signs acceptance.
All other works, services, testing, plant and materials or permits not covered in the quotation or tender or order are the responsibility of the Occupier.
2. To make every effort to ensure that design, materials, fittings and installation is completed on time subject to the availability of the Goods to be used and the readiness of the Occupier's property site.
3. To guarantee to repair or replace any damaged or defective materials or defects in application or installation provided that the Occupier notifies the Contractor within 20 days from the completion of the supply under the tender or quotation or Occupier order and provided that the Contractor has reasonable opportunity to investigate the claim and provided that all materials and installation has been supplied by the Contractor and not by the Occupier or any third party and that the Goods have not been interfered with in any way by the Occupier or a third party. However where surface level falls are less than 2% (1:100) there is no guarantee to eliminate puddling or ponding of surface water.
4. To apply a warranty of Goods for twelve (12) months and six (6) months for installation or application workmanship Services after delivery subject to the claims conditions.
5. To provide the Residential Occupier of a statement of his/her rights and obligations with any claim for payment from the Contractor and for adjudication under the Construction Contracts Act where disputes may arise.

The Occupier agrees to the following:

1. To pay the full price for the Goods and Services by the terms of payment set out in the tender or quotation or order unless the Contractor has agreed to other credit terms and if payment is not made in full by the 20th of the month following delivery the Contractor is entitled to charge the Occupier interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by the Contractor's bank calculated from the due date of

payment down to the actual date of payment, and the Contractor may at its option suspend the sale and secure Goods in its possession regardless of the term of this agreement until the overdue amounts are paid in full.

2. To pay costs incurred if the installation is cancelled prior to completion and to pay additional costs if there is any alteration or variation to the Goods or Services required by the Occupier OR where delays are caused by the Occupier or its agents and where the Company has presented itself to do the work agreed OR where the Contractor discovers or encounters buried utilities not previously known and where the Occupier has not notified the Contractor. (Cost increases occur where any rock, previously stabilised material, hazardous material, pudgy or loose soil, reinforcing steel, water pipes, power or utility lines, sewer or stormwater pipes are discovered or encountered and not otherwise known below the property site surface). In such cases the Contractor will cease supply of Goods and Services and provide the Occupier with an estimate of costs for the additional supply and the Occupier has the option to pay for supply completed to the time of discovery and terminate the contract OR accept the additional costs to complete the order.
3. That the Contractor is not liable for any claim by the Occupier for any economic or consequential loss that may be incurred by the Occupier where they may think that they are prejudiced by damaged or defective materials or defective installation or application and that claims will be limited to repair or replacement of materials or installation or application or the price of the Goods and only within the scope of the quotation or tender and the Contractor guarantee will not apply where:
 - (a) the damage or failure is due to damage, misuse or negligent care of the Goods while in the possession of the Occupier or Occupier failure to follow written care instructions and that the Contractor is not liable for damages or loss suffered by the Occupiers own actions;
 - (b) The damage or failure is entirely due to instructions from the Occupier regarding the materials or application or installation of materials that are required for the job.
 - (c) The failure is due to the Occupier not complying with national or Local Council laws for the use of the site.
 - (d) The damage or failure is due to the Occupier or a third party attempting to rectify defects or damage.
 - (e) The defect or failure is due to bad weather and other adverse environmental or other force majeure effects outside the control of the Contractor.
4. In the event of any dispute between the Contractor and the Occupier arising out of this contract, the dispute provisions of the Act shall apply.

The parties agree to the following terms and conditions that are in addition to the Act.

The Contractor retains full title and ownership of any Goods that remain unpaid and the Occupier cannot sell any part of the Goods to any third party and after a reasonable time the Contractor may:

enter the property of the Occupier to remove Goods supplied (in accordance with the Credit (repossession) Act) regardless if the Goods are affixed or mixed with other goods or to the property of the Occupier, and the Contractor will not be held liable for any loss whatsoever that the Occupier may suffer as a result of such removal OR, where non payment is because of dispute by the Occupier and where the dispute is not notified in writing by the Occupier within 20 days after the completion of the supply of Goods or Services under the quotation or tender such dispute shall be heard in accordance with the adjudication procedures of the Act and the outcomes of adjudication are final and legally binding and that the Contractor has the right to suspend supply for non payment of any undisputed part of payment and the Occupier shall also agree that he/she may not engage any other person to complete the job until the decision of the Adjudicator.

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Parts of this agreement are under the provisions of the Construction Contracts Act (2002) for residential construction. Additional clauses regarding ownership of the Goods until payment is made in full, repossession, default for payment and right to suspend supply have been applied.

Notes to assist the Occupier about the Construction Contracts Act

PAYMENTS

The Contractor must issue a Payment Claim in the form required by the Act.

The Contractor must issue a Statement of Occupier Rights with every Payment Claim. The main points of this statement are:

If you object to any Payment Claim you must provide a written payment schedule within 20 days stating the amount you will pay (called the scheduled amount) and the amount that you dispute and the reasons as to how you calculated the scheduled amount and the reasons for the difference.

If you object to a Payment Claim but do not respond to a Payment Claim within 20 days that the Act declares the payment must be in full and failure to pay allows the Contractor to make a claim in the Court including costs and damages OR for adjudication under the Act.

Full information of payment procedures and consequences and your rights are contained on the reverse side of the Payment Claim form.

VARIATIONS

All variations agreed between the parties must be expressed (written) on the Variation Submittal form that the Contractor will provide for you.

THE OCCUPIER CAN OBTAIN DETAILS OF THE ACT FROM

www.buildingdisputestribunal.co.nz/Construction+Contracts+Act



JOHNSTONE & MASTERS LTD. ROADING AND CONSTRUCTION

Driveway Care Instructions - Asphalt

The following points will help protect your property and keep your children safe.

During Construction

CHILDREN – It is our experience that children are attracted to resurfacing work. For their safety would you please ensure they stand well back from the job whilst it is in progress. A minimum distance of fifteen (15) metres from the construction area is recommended.

PETS – It is also a good idea to keep your pets indoors while the work is in progress.

Asphalt Care

Asphalt contains liquid tar which needs time to harden and cure. Your driveway will be fully cured usually within 24 months; until then it will remain pliable and soft.

Even when cured, asphalt can sometimes soften in extremely hot weather and harden as temperatures fall. To temporarily harden hot asphalt, you can water it down with a garden hose. If soap suds should appear, do not be alarmed. This is a reaction between the diesel fuel found in asphalt and the chlorine found in some city water.

1. To avoid scarring, do not pull out too fast, pull in too quickly, or drive too fast on your asphalt driveway. During the initial curing time, don't park in the same spot all the time and don't use a jack stand or car ramps unless you put a piece of plywood underneath to distribute the weight. Do not turn your steering wheel back and forth when your car is not moving.
2. Large heavy vehicles can depress and cause ruts in your new Asphalt. Keep heavy trucks (concrete, oil, landscaping, etc.) off your new driveway. If a camper or other vehicle will be stored for a long period of time, place a piece of plywood under the tongue jack and tyres. Avoid walking on your new drive with high heel shoes, place lawn chairs, bicycle kick stands, or any other sharp objects on it. They will create holes and depressions.
3. The edges are the weakest part of your driveway due to the lack of side support. Avoid driving on the edges since they will crack and crumble in time. Building up the sides of your driveway with topsoil will support the edges after the grass has grown.

Appearance

Your driveway may look smoother in some areas than in others because of the makeup of Asphalt. Asphalt is composed of various sizes of stone, sand, liquid asphalt and other ingredients which cause a varied texture of the surface. Also, Asphalt areas that have been raked and spread with hand tools may appear different in texture from those spread by machine.

Avoid gasoline, oil, anti-freeze, power steering and transmission fluid spills and leaks. These will dilute the liquid asphalt in your Asphalt. Any hole left by these spills should be filled with cold patch. Any hairline cracks that may develop due to the contraction and expansion of the ground should be filled with crack filler. These products can be purchased from your local building supply store

Regular weed spraying should be done to your new driveway. Remove any new grass seed sown that has been deposited on the surface of the new driveway.



Driveway Care Instructions - Chip seal

The following points will help protect your property and keep your children safe.

Construction

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PETS – It is also a good idea to keep your pets indoors while the work is in progress.

Bitumen

Bitumen is very “sticky” in its early life and you should be very careful that you do not get traces on your shoes. Shoes should be checked for Bitumen before walking inside to prevent bitumen from being carried on to floor coverings. Bitumen can be removed from the soles of shoes using turpentine or kerosene. Loose chips may also track into garages for up to 12 months

1. To avoid scarring, do not pull out too fast, pull in too quickly, or drive too fast on your new driveway. During the initial curing time, don't park in the same spot all the time and don't use a jack stand or car ramps unless you put a piece of plywood underneath to distribute the weight. Do not turn your steering wheel back and forth when your car is not moving.
2. Large heavy vehicles can depress and cause ruts in your new Asphalt. Keep heavy trucks (concrete, oil, landscaping, etc.) off your new driveway. If a camper or other vehicle will be stored for a long period of time, place a piece of plywood under the tongue jack and tyres. Avoid walking on your new drive with high heel shoes, place lawn chairs, bicycle kick stands, or any other sharp objects on it. They will create holes and depressions.
3. The edges are the weakest part of your driveway due to the lack of side support. Avoid driving on the edges since they will crack and crumble in time. Building up the sides of your driveway with topsoil will support the edges after the grass has grown.

Regular weed spraying should be done to your new driveway. Remove any new grass seed sown that has been deposited on the surface of the new driveway.

Preparation

JML takes no responsibility for puddling and pot-holing of the end surface product, where we have not prepared the subbase. All subbases must be engineered certified before surfacing can occur if not prepared by JML.

