

Arb Innovations Limited

Wellington - 326 Hebden Crescent, Kelson, Lower Hutt  
[admin@arbinnovations.co.nz](mailto:admin@arbinnovations.co.nz) 04 212 6366

Wairarapa – 11 Pakihi Road, Waignawa, Carterton  
[Wairarapa@arbinnovations.co.nz](mailto:Wairarapa@arbinnovations.co.nz) 0800 ARB LTD



### **Terms & Conditions of Contract**

1. **The Services** Any services provided by Arb Innovations Limited to the customer will be provided using reasonable skill and care expected from a person providing arboricultural services in compliance with the specifications within the quotation.
2. **Acceptance of Quote Retender** The customer's acceptance of any quotation or the provision of instructions by the customer to Arb Innovations Limited to commence any work constitutes an agreement to purchase the services and to be bound by these terms and conditions.
3. **Electronic acceptance** Arb Innovations consent to your acceptance and signature being received in electronic form. Acceptance of our terms including any updated terms (by any method) does not release any prior personal guarantee or security granted. By accepting our terms electronically you warrant that you have authority to accept the terms on behalf of all the account holders which you are given online access to and accept the terms both in your personal capacity and as a duly authorised agent for all the entities you are given online access to. Download a copy of our full terms and conditions from <http://www.arbinnovations.co.nz>
4. **Expiry of quotation** Three months after the submission of the quotation, the contractor reserves the right to withdraw and re-price work, unless otherwise agreed in writing on acceptance of instructions from the customer.
5. **Payment** The customer accepts that payment is made in full upon the day of completion of the job, unless other written arrangements have been agreed to by both parties prior to commencement of works. Interest shall be charged on any accounts owing after the due date at the rate of 2% per month. Any expenses, disbursements and legal costs incurred by Arb Innovations Limited and the enforcements of any rights contained in this contract shall be paid by the customer, including any collection fees.
6. **The price** The price or prices provided for in the quotation exclude GST, which must be paid by you in addition to the price or prices quoted. Unless specified.
7. **Cancellation Fee** If the customer cancels the provision of services or suspends the provision of the services within 24 hours of the commencement date and time advised by Arb Innovations, then Arb Innovations reserve the right to charge the customer a cancellation fee of up to 20% of the quoted price. The cancellation fee is payable in accordance with these terms.
8. **Collection and Use of Information** The customer authorises Arb Innovations Limited to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Arb Innovations to any other party.
9. **Credit Check** Arb Innovations may use a third-party consumer credit reporting service to carry out on Arb Innovation's behalf credit check references and debt collection and as such the customer authorises Arb Innovations to disclose any information obtained under Clause 8 to that third party.
10. **Delays** Arb Innovations shall not be liable for any delay in commencing, carrying out or completing the services. As such, any dates provided by Arb Innovations Limited as to the commencement of the services and/or completion of the services are estimates only.
11. **Suspension of Services** Arb Innovations shall be entitled to refuse to carry out any further work or services for the customer under these terms or any other terms:
  - (a) if the customer is in default of any of its obligations under these terms until the default on the part of the customer is remedied; or
  - (b) If an event occurs during the provision of services which creates a hazard or danger to the safety of any person or would delay provision of the services until such time as the event has ceased to occur.If Arb Innovations has to suspend any of the provision of the services under this clause then Arb Innovations Limited will not be held liable for any costs, claims, liabilities, damages or losses arising as a result of the suspension of the works including any loss of profits or opportunities incurred by the customer. If the Construction Act 2002 is applicable to the services being provided are classified as construction work under that Act then this clause will not apply to those services and instead the provisions of that Act will apply.
12. **Tree preservation orders and considerations areas** It will remain the responsibility of the tree customer or customer to determine any protections over the area including whether the area is a historic site or is an area of archaeological, scientific, environmental, religious or cultural significance. If the customers' determination discloses that any permits and/or consents are required, then it is the responsibility of the customer to obtain these permits and/or consents. The customer will provide copies of all plans, permits and consents and any other relevant documentation acquired as part of their determination to Arb Innovation. Arb Innovations will not be held liable for any damage, costs, claims, liabilities, losses because of the customer's failure to disclose and/or provide copies of relevant consents, permits, plans or documentation in relation to the any protections over the area.
13. **Easements, private covenants and boundaries** Easements, private covenants and boundaries will remain the responsibility of the customer to determine and, if any consent or authorisations are required under any easements or covenants, then the customer is responsible for obtaining these authorisations or consents. Arb Innovations will not be held liable for any breaches in relation to such easement, covenant or any issue regarding boundaries.
14. **Third Parties** Where works are proposed to third party trees, i.e. 'neighbours trees', the contractor will require written confirmation from the tree customer ('the neighbours') that the works are agreed and where necessary, that access is permitted. If works only apply to overhanging branches that can be pruned from within the client's property then permission is not required but the neighbour should be advised where practicable (please also see 8. above as this may also apply.)
15. **Fire/rail permits, traffic management, erosion control and rail clearance** It will remain the responsibility of the customer to obtain any necessary permits, licenses, clearances or plans from the local regional council at their sole cost if these are required to carry out the services provided by Arb Innovations.

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**16. Hidden obstructions** Quotations are based on the assumption that the direct work site is free of any hidden obstructions unless clarified by the customer in writing.

**17. Underground services** Arb Innovations shall not be liable for any damages caused as a result of work performed under the contract to such pipes, wires or cables or any underground services should no plans be supplied by the customer with correct locations.

**18. Transplanting** If the services require Arb Innovations Limited to relocate any trees and the relocated tree subsequently does not survive, then Arb Innovations will not be held liable for the loss of the tree nor will Arb Innovations be liable to refund to the customer the costs charged by Arb Innovations Limited for relocation of the said tree. As such, the customer acknowledges that Arb Innovations cannot guarantee that a relocated tree will survive the relocation and has used industry standard practices in relocating the tree.

**19. Firewood** If applicable firewood will be left on site and will be slabbled or ringed but not split unless specifically requested in the contract. All wood removed becomes property of Arb Innovations Limited unless specified otherwise.

**20. Stump Grinding** Stump-grinding will be to a depth of 150mm below the immediately adjacent ground level and will include the removal of the stump and buttress roots but will not include lateral roots unless otherwise specified. The client will advise the contractor of any underground services in the vicinity of the stump prior to starting the job.

**21. Access** If it is necessary to use heavy machinery that could cause damage to driveways and or footpaths, Arb Innovations Limited will not be liable for any damages caused.

**22. Insurance Cover** All work carried out by Arb Innovations is covered by 5 million dollars liability insurance for damage to persons or property that may result in implementation of the contract.

**23. Complaints** Any complaints that may arise from work performed under any contract arising from acceptance of the estimate or quote must be made within 7 days from the date of the invoice.

**24. Disputes** The parties agree that all differences in dispute which may arise between the parties as to this agreement or any act or thing done or omission or interpretation of this agreement shall be dealt with in the following manner:

(a) The parties will negotiate in good faith with intent of reaching expediently a mutually acceptable resolution within ten (10) working days of the dispute being notified by one party to the other.

(b) In the event that the negotiation is unsuccessful, then either party may pursue any other legal remedies available to them.

**25. Cancellation** Arb Innovations shall, without any liability and without any prejudice to any other right it has in law or equity have the right by notice to suspend or cancel in whole or in part any contract for services to the customer if the customer fails to pay any money owing after the due date or commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967 or the customer commits material breach of this contract which is capable of being remedied, is not remedied within twenty (20) working days of receiving of written notice of such breach.

**26. Force Majeure** No claim or liability will arise against Arb Innovations under these terms or any quotation, if and to the extent that Arb Innovations' fail or omission to carry out or observe any versions of these terms arises by Force Majeure. "Force Majeure" means any event outside the reasonable control of Arb Innovations and includes, without limitation, fires or casualties or other accidents, power issues, acts of Gods, strikes and lockouts, severe weather conditions, delay in supply of materials or unavailability of materials, war or other violence, or the introduction of any law, order regulation demand or the requirement of any Governmental Agency or Department.

**27. Amendments** Amendments to the contract specifications and price must be made in writing and agreed upon by both parties.

**28. Assignment** The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Arb Innovations. Upon giving written notice to the customer, Arb Innovations can assign its rights and/or obligations under this contract.

**29. Waiver** Failure by Arb Innovations to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of the rights or obligations Arb Innovations has under this contract.

**30. Severability** If any provision of this contract shall be invalid void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**31. Entire Agreement** These terms and conditions and any quote provided by Arb Innovations Limited record the entire agreement and understanding between the parties in respect of matters relating to the services. These terms and conditions and/or any quote supersede any prior agreement, correspondence, discussions, marketing, advertisements or undertakings between the parties and their respective agents. However, nothing in these terms prevents either party seeking to exercise any rights and remedies available to that party under any legislation or law available to them.

**32. Limitation of Liability** Arb Innovation's liability arising from or in connection with providing the services will be limited to:

(a) Reasonable and reasonably foreseeable costs, claims, liabilities, damages or losses directly caused by Arb innovation's actions or omissions; and

(b) Reasonable and reasonably foreseeable indirect, special loss, loss of profits, loss of contract, loss of opportunity, loss of goodwill, loss of use, however arising, in each case to the extent that policies of insurance held by Arb Innovations respond to such losses; and

(c) A maximum total limit under (a) and (b) above of \$2,000,000.00 in the aggregate.

The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from Kea for the purposes of a business in terms of section 2 and 43 of that Act.

Without limiting and liability or obligation expressly set out above, Arb Innovations shall not be liable in connection with any head contract or vibration between you and a third party unless Arb Innovations have seen and agreed in writing to those terms.

If any loss or damage suffered by one party has been contributed to by that party's actions or omission then the liable party's liability, if found liable (whether in contract, tort or otherwise) will be reduced to reflect the contributory nature of the claiming party's actions or omissions.