



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 588

**APPLICANT**            **CU Ltd**

**RESPONDENT**        **ZS**

**SECOND**                **HC Ltd**  
**RESPONDENT**

**The Tribunal orders:**

ZS & HC Ltd is to pay CU Ltd the sum of \$10,684.41 in full, on or before 5pm Friday 22 December 2023.

**Reasons:**

1. ZS director of HC Ltd (the Respondents) purchased products and services from CU Ltd in February 2022 to May 2022 valued at \$11,817.52, and CU Ltd claim that the Respondents have overdue invoices owing and want to be paid. CU Ltd initially claimed the sum of \$14,785.07 representing the sum owing and interest and collection costs as agreed in the terms and conditions, and during the hearing, CU Ltd decreased the sum sought to \$10,684.41.
2. The Respondents gave evidence that they were quoted a lower sum for the two orders of frame truss and pre-cut timber. For lot 62 they were quoted the price of \$18,771.23 and were later invoiced \$24,910.28. For lot 110 they were quoted the price of \$18,833.96 and were later invoiced \$22,405.83. In response, the Respondents said they only paid the original sum invoiced plus ten percent extra as a good will gesture. They dispute that they owe any further sum to CU Ltd.
3. CU Ltd defended the invoice amounts and gave evidence that the quotes clearly state that they are valid for 30 days only. CU Ltd said that as the Respondents purchased the goods outside of the 30 days, the quote price no longer applied, and the respondents were charged the price of goods at the time of purchase which is subject to market fluctuations among other factors. CU Ltd said that timber prices had increased by over 70% and this was reflected in the invoice the Respondents received.
4. The issue to be determined are as follows:
  - What if any is CU Ltd entitled to be paid?
5. In a civil claim such as this, the applicant bears the burden of proof on the balance of probabilities (that is, that it is more likely than not). When assessing whether the onus of proof has been discharged by an applicant, I need to consider and evaluate the evidence and information presented by the parties. While I have carefully considered all the evidence and submissions from

the parties, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### **What if any is CU Ltd entitled to be paid?**

6. The relevant law is the law of contract. A contract is a legal agreement between two or more parties, and the terms of the contract set out what each party has agreed to. An agreement to carry out services or supply goods for payment is an enforceable contract. It is a breach of contract if a party to a contract does not do what they have agreed to under the contract.
7. After carefully considering all the evidence from both parties before me, I find that CU Ltd is entitled to be paid the sum claimed of \$10,684.41.

This is so for the following reasons:

- a. The VIP frames and trusses quotation clearly states that ‘the quotation is only valid for 30 days only’. The parties did not dispute that the Respondents purchased the goods outside of the 30-day period.
- b. The terms and conditions agreed to by the Respondents is attached to the quote and states the following:

*‘This quotation is based on current labour and material rates and remains **valid for 30 days** from the date quoted above. Prices are subject to market fluctuations and availability after the 30 day valid period’.*

- c. CU Ltd presented evidence to show that the Respondent had an account with CU Ltd agreeing to the terms and conditions, which said the following;
  - i. The Respondent agreed to pay for products and services supplied due on the 20th day of the month following the date of invoice;
  - ii. The Respondent agreed to pay interest of 30% per annum and on a daily basis on money not paid on the due date;
  - iii. The Respondent agreed to indemnify CU Ltd against losses, costs and expenses the CU Ltd may suffer or incur as a result of the Respondent’s non-payment;
  - iv. The Respondent signed a written guarantee and indemnity in March 2020 guaranteeing money owed would be paid on time, and indemnifying CU Ltd against all losses, costs and other expenses suffered from the Respondent failing to pay on time.
  - v. The Respondents agreed to the terms and conditions about price:

*The price is exclusive of, and subject to the addition to the following, as determined by the Company in its sole discretion:*

- *The amount of any GST and other taxes and duties which may be applicable;*
- *Any costs incurred by the Company in relation to the supply of the Goods to the Customer, (which shall include third party costs charged to the Company) relating to (without limitation) the supply, production and/or delivery of the Goods; and*
- *The amount of any increase in the cost of any items (including any change in currency exchange rate) affecting the cost of supply, production and /or delivery of the Goods prior to the date of delivery.*

8. I have had regard to the Respondent’s evidence, that the amount invoiced is much more than the sum they were initially quoted, however, as mentioned, I accept CU Ltd’s evidence that the quotes were only valid for 30 days, and that the Respondent purchased the goods outside of the 30 days and therefore the price quoted at the time no longer applies. In addition, the Respondents had signed and therefore agreed to the terms of conditions of the contract and quote, which states that price was subject to market fluctuations, and may increase due to the increase of the cost incurred by the Company in relation to the supply of the goods. CU Ltd said that the price of timber increased by a substantial amount around the time of COVID and presented evidence that the

terms and conditions state that the price of goods can change, and the Respondents had agreed to these terms when they signed the contract.

9. I have had regard to the Respondent's submission that ZS should have been informed about the increase of charge. CU Ltd insisted that staff member OP, did call ZS and informed her about the increase in price, and she agreed to the cut and charge at the time. The Respondent denies that she was called. Although there was no documented evidence by either party to prove whether the call was made or not, clause 1.3 of the terms and conditions state that:

*'the customer acknowledges that it is their responsibility to check the price of Good(s) prior to placing an order'.*

10. I have had regard to the Respondent's submission that CU Ltd owed them a credit of \$575.00 for the returned pallets. The Respondent said that they returned pallets to CU Ltd themselves, and should receive a credit of \$50.00 for every pallet returned. CU Ltd gave evidence that clause 14 of the Terms and Conditions clearly state that they charge a handling/return fee, and that the credit amount is \$30.80 per pallet regardless of whether the pallets are picked up by the Company, or returned by the Respondents themselves.
11. Although I accept the Respondent's evidence that on occasion, CU Ltd did credit them \$50.00 for the returned pallets without deducting the handling fee (which CU Ltd said was in error) and it may be reasonable that the Respondents expect to receive \$50.00 credit for all returned pallets, I have taken into consideration that CU Ltd decreased the amount they were claiming from \$11,817.52 down to \$10,684.41 (less \$1,133.00) during the hearing, which is almost double the credit amount the Respondent was seeking. I therefore consider that the credit of \$575.00 sought by the Respondents has been deducted from the amount owing, and grant CU Ltd the sum of \$10,684.41 in full as ordered above.
12. For these reasons, I find that ZS and HC Ltd is liable to pay the sum of \$10,684.41 to CU Ltd.

**Referee: DTR Unasa**

**Date: 24 November 2023**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.