

CONTRACT RESOURCES' TERMS AND CONDITIONS OF SUPPLY (NZ)

1. APPLICATION OF THESE TERMS AND CONDITIONS ("Terms")

For the purpose of this agreement:

"Contract Resources" means **CONTRACT RESOURCES (NEW ZEALAND) LIMITED**;

"Buyer" means the business named in the attached quotation ("Quotation");

"Services" means the performance of the tasks set out in the attached Quotation;

"Purchase Order" means the document issued by the Buyer to Contract Resources for the Services and includes any specifications, drawings or other documents.

"Contract" means Contract Resource's Quotation (including these Terms).

2. QUOTATIONS

The Quotation shall remain valid for thirty (30) days from the date of the Quotation, unless otherwise stated in the Quotation.

3. CONTRACT

3.1 Commencement

Contract Resources will not be obligated to proceed until a Purchase Order is issued by the Buyer and all details required to be provided by Buyer have been received and accepted by Contract Resources.

3.2 Price

- a. If the Contract Price/s set out in the Quotation is based on a schedule of rates, the Buyer acknowledges that such rates are based on the current costs of labour, materials, bank rate of exchange for demand drafts, freight, insurance (including war risk), customs duty and all other costs prevailing at the date of the Contract and that any change in such costs (or any other costs that form a component of Contract Resources' rates) may result in an amendment to such rates, which Contract Resources shall notify to the Buyer as soon as possible (along with reasons for such change); OR
- b. If the Contract Price/s set out in the Quotation is a lump sum price, the Buyer acknowledges that such lump sum price is based on the matters set out in the Quotation and that if there is a change in any such matters (including where Contract Resources is asked to perform additional Services to those set out in the Quotation), the Contract Price/s shall be adjusted accordingly.

3.3 GST

GST is not included in the Contract Price.

3.4 Performance

In consideration for the Buyer hereby agreeing to be bound by the Contract with respect to the Services, Contract Resources shall perform the Services with reasonable skill and care and in accordance with the Contract.

4. DESCRIPTIVE DATA

All illustrations, drawings, catalogues, advertisements etc. accompanying the Quotation or work authorisation must be regarded as informative only and are not part of the Contract unless otherwise stipulated in the Quotation or work authorisation. All weights, measurement, powers, capacities

and other particulars specified in these illustrations and drawings etc. are stated in good faith but inaccuracies shall not vitiate the Contract or form the basis of any claim against Contract Resources nor justify rejection of the Services.

5. BUYER'S COOPERATION

5.1 The Buyer shall promptly provide any assistance, information or documents reasonably required by Contract Resources to enable the timely performance of the Services.

5.2 Without limiting clause 5.1:

- a. upon request the Buyer shall furnish free of charge to Contract Resources three (3) copies of all specifications, drawings and other documentation and information specified to be supplied by the Buyer (and shall grant Contract Resources the right to use the intellectual property in such items in order to perform the Services);
- b. if an Import License is necessary to obtain admission into the country of destination of any equipment required to perform the Services, the procurement shall be arranged by Contract Resources and any costs relating to such procurement and importation shall be the responsibility of the Buyer; and
- c. the Contract is based on the assumption that access to the Buyer's site (with suitable provision for transport of all equipment, materials and plant and the actual site itself) will be made readily available during the period for the performance of the Services and that reasonable space will be provided at the Buyer's site (in a location proximate to where the Services are to be performed) to take deliveries of materials and to store Contract Resources' equipment and that the Buyer shall make available to Contract Resources (at the costs of the Buyer) all necessary telecommunications, electrical power, compressed air, light, water, waste disposal amenities, toilet and other services and facilities at the site during the progress of the Services.

6. INSTRUCTIONS

Insofar as these Terms require that instructions be given in writing or that information be provided, the Buyer and Contract Resources agree that minutes certified by Contract Resources of meetings between authorised representatives of the Buyer and Contract Resources shall be deemed to be written instructions under the Contract. The Buyer acknowledges that the Terms are set out herein and that Contract Resources shall not be bound to carry out any oral instructions given or alleged to have been given to any agent or representative of Contract Resources.

7. INTELLECTUAL PROPERTY

The proprietary products and methods used by Contract Resources are covered by various patents, design copyright and licensing agreements. In order to protect Contract Resources intellectual property, Contract Resources will not release to the Buyer any details which may be used to copy Contract Resources products. Ownership of copyright created in the performance of the Services will vest exclusively with Contract Resources, provided that Contract Resources will grant a licence to Buyer to enable Buyer to use (in the manner advised to Contract Resources prior to commencement of the Services) any copyright vesting in the documents provided by Contract Resources to Buyer in the performance of the Services.

8. CONFIDENTIALITY

The Quotation may contain information and concepts which are proprietary and confidential to Contract Resources. The information contained in any Quotation must be kept strictly confidential and used only for the purpose of evaluating Contract Resources' Quotation or the performance of the Services. Disclosure of any proprietary and confidential information to any third party or other use of such information without Contract Resources written permission is strictly prohibited.

9. PAYMENT

9.1 Time for Payment

Contract Resources may issue invoices for payment of the Contract Price for the amounts, and at the intervals, set out in the Quotation. Buyer shall pay all invoices within thirty (30) days from the date thereof without deduction.

9.2 Cancellation

In the event that Buyer wishes to omit any Services from the Contract, Buyer shall compensate Contract Resources for the costs of any material or tools purchased for such Services plus 15% of the value of the omitted Services on account of indirect costs. Contract Resources' account shall be conclusive as to the amount payable.

9.3 Interest

Contract Resources may charge interest at the overdraft rate of its bank (calculated on a daily basis) on amounts invoiced under this Contract and not paid by the final date for payment.

9.4 Security

If any amounts invoiced by Contract Resources are not paid by the final date for payment, Buyer hereby authorises Contract Resources or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Buyer at any time.

10. SUSPENSION OF THE SERVICES

In the event of the suspension of the Services on the Buyer's instructions or Buyer's failure to comply with this Contract, the Contract Price may be increased by Contract Resources to cover all reasonable costs arising from the suspension and Contract Resources' calculation of such costs shall be conclusive.

11. PROLONGATION

11.1 In the event that Contract Resources is prevented from performing its obligations under the Contract due to any event beyond Contract Resources' control, then Contract Resources has the right to extend the time to perform its obligations for a similar period to that for which it was unable to perform the Services and shall not be in breach of such obligations whilst the event persists.

11.2 If the prolongation is due to the Buyer or its agents failing to perform its obligations under this Contract, then the Buyer must compensate Contract Resources for the costs incurred by Contract Resources as a result of such prolongation costs.

11.3 Contract Resources shall have no liability for any costs, expenses, or otherwise incurred by Buyer as a result of the Services not being completed by the due date.

12. UNFIXED PROPERTY

Contract Resources takes no responsibility for the storage and handling of any items to be incorporated into the Services or the Buyer's property whilst in Contract Resources possession. Every care will be taken to ensure the safe handling of such items as per the manufacturer's recommendations or Buyer's direction but Contract Resources shall not be responsible for any damage sustained.

13. INSURANCE

Contract Resources will take out the following insurances in connection with the performance of the Services: workers compensation insurance as required by law, general public liability and property damage insurance (providing \$5m of cover) and motor vehicle insurance (covering all vehicles used in the performance of the Services).

14. FREIGHT

The Buyer agrees that, as Contract Resources has no control over the freight carrier's conditions, the Buyer accepts and abides by the conditions and stipulations on bills of lading and similar documents.

15. WARRANTY

15.1 The *Fair Trading Act 1986* in certain circumstances implies mandatory conditions and warranties (the "consumer warranties"). Where such consumer warranties apply to in addition to the the warranties herein contained, to the extent of any inconsistency, the consumer warranties shall prevail. All other express or implied conditions or warranties in respect of the Services are hereby excluded from the Contract.

15.2 The Services are hereby sold and warranted against any defect in workmanship appearing under proper usage within twelve (12) months from date of delivery.

15.3 No express warranty is given as to fitness or suitability of the Services for any specific application or use unless expressly endorsed by Contract Resources. To the extent permitted by the *Fair Trading Act 1986*, the liability of Contract Resources shall be limited to the repair or replacement at the option of Contract Resources of the defective material at the workshops of Contract Resources.

15.4 The Buyer acknowledges that no person representing or purporting to represent Contract Resources has authority to make any representations or warranties on behalf of Contract Resources other than those set out expressly in the Contract and any further express or implied representations and warranties are expressly void.

15.5 Contract Resources reserves the right to make null and void the warranty should the asset on which the Services are performed be modified, altered, damaged or put to any undue stress. Work and/or services carried out on such asset in a manner that affects the Services by anyone other than Contract Resources and/or their nominated agents shall make the warranty null and void unless the Buyer obtains written approval from Contract Resources before any such work/services is carried out.

16. CLAIMS

The Buyer must within thirty (30) days of the date of completion of the Services notify Contract Resources in writing of any matter or thing by reason whereof the Buyer alleges that the Services are not in accordance with the Contract. Otherwise the Services shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to accept and pay for the same accordingly.

17. HOLD HARMLESS

The Buyer hereby indemnifies Contract Resources from any claim, action or liability for loss or damage to persons or property caused directly or indirectly by Buyer's failure to perform any of its obligations under this Contract

18. TERMINATION

In the event that a party to the Contract:

- a. fails to carry out the terms of the Contract; or
- b. becomes insolvent or bankrupt or calls a meeting of creditors or goes into liquidation, voluntary or otherwise,

- c. the party not in default may, notwithstanding any waiver of any such default or failure, and without prejudice to its other rights under the Contract, suspend delivery or terminate the Contract or (in the case of Contract Resources) require payment in cash before the performance of the Services, notwithstanding the terms of payment specified. Any equipment to be supplied by Contract Resources as part of the performance of the Services shall remain the property of Contract Resources until all monies outstanding to Contract Resources in connection with the Contract (other than agreed retention monies if any) have been paid.

19. PRIVACY

- 19.1 The Buyer hereby authorises Contract Resources to collect, retain, record, use and disclose consumer and/or commercial information about the Buyer in accordance with the *Privacy Act 1993*, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by Contract Resources, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.
- 19.2 The Buyer also authorises Contract Resources to make enquiries with respect to the Buyer's consumer and commercial credit worthiness, to exchange information with other Credit Providers in respect to previous consumer and commercial defaults of the Buyer and to notify other Credit Providers of a consumer and/or commercial default by the Buyer.

20. LIMITATION

To the maximum extent permitted by law, any liability of Contract Resources for loss or damage, whether arising under or in connection with or for breach of this Contract, or in connection with the performance or non-performance of the Services, whether such liability arises in contract, in tort (including negligence), under statute, under any indemnity, by cross claim or otherwise, and whether arising in connection with one or more events, is limited and excluded as follows:

- a. Contract Resources shall have no liability for any consequential or indirect loss or damage, loss of profit or anticipated profit, business interruption losses, production losses, loss of revenue or loss of use, loss of reputation or loss of opportunity; and
- b. The total aggregate liability of Contract Resources is limited to the amount paid to Contract Resources for the performance of the Services.

21. SEVERABILITY

- 21.1 The Contract is to be regarded as severable in the event of the Services being of different kinds or the Contract providing for delivery by instalments and the separate items of the Contract shall be regarded as separately contracted for and each and every delivery under the Contract shall be regarded as a separate contract and damages arising from any alleged breach of Contract by Contract Resources shall be limited accordingly.
- 21.2 Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it shall be severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms or affecting the validity or enforceability of that provision in any other jurisdiction.

22. GOVERNING LAW AND JURISDICTION

The Contract governed by the laws of New Zealand and all disputes arising between the Buyer and Contract Resources will be submitted to Arbitration under the *Arbitration Act 1996* as is necessary to hear the matter.

23. SITE SECURITY

The Buyer agrees to provide site security for Contract Resources tools and equipment should they be left unattended at the Buyer's site so as to ensure that such tools or equipment are not stolen or damaged.

24. WORKING HOURS

All work will be carried out during the working hours specified in the Quotation or, if none are specified, normal working hours. Such work carried out at other times at the Buyer's request will be subject to an extra charge.

25. CONDITIONS OF PREMISES

The Buyer warrants that the structure of the premises or equipment in or upon which the Services are to be performed is sound and will sustain the performance of the Services.

26. HOT WORKING

Contract Resources will take all reasonable precautions against fire during site cutting, welding and other hot-working tasks. Insurance of buildings and contents shall be the responsibility of the Buyer.

27. ACCEPTANCE TESTS (where applicable as stated in the Quotation)

- 27.1 Upon completion of the Services or any mutually agreed part thereof the Buyer and Contract Resources shall carry out acceptance tests as defined in the Quotation.
- 27.2 To confirm that the performance of the Services complies with the specification, the Buyer shall forthwith issue a Certificate of Acceptance of the Services or part thereof which shall then be deemed to have been finally accepted or taken over by the Buyer. Acceptances shall not be unreasonably withheld because of minor omissions or deficiencies which do not affect the commercial use of the Services provided always that Contract Resources undertakes to make good such omissions and defects at the earliest date practicable.
- 27.3 If by any act of the Buyer, Contract Resources shall be prevented from carrying out acceptance tests within thirty (30) days from the date of completion of the Services or mutually agreed part thereof unless in the meantime performance shall have proved not to be substantially in accordance with the Contract, the Services shall be deemed to have been accepted on the expiry of the said thirty (30) days and payments to Contract Resources shall be made as if satisfactory acceptance tests had taken place.
- 27.4 All costs and fees incurred in connection with testing and inspection will be payable by the Buyer (provided that where a lump sum price is payable for the Services, the acceptance tests described in the Quotation as being included in the scope of the Services shall be deemed included in the lump sum price unless expressly stated otherwise in the Quotation).

28. HEALTH AND SAFETY

The Buyer shall provide to Contract Resources a list of known identified hazards relevant to the performance of the Services and any health and safety management plan operated by the Buyer that is relevant to the performance of the Services. On sites where there is multiple provision of services and works, the Buyer shall establish a clear hierarchy of responsibilities related to health and safety management between all parties. Contract Resources does not assume any obligation of the Buyer under the Health & Safety in Employment Act 1992, unless that obligation is expressly stated in the Quotation to form part of the Services.

29. QUALIFICATIONS

These Terms shall govern the performance of the Services to the exclusion of any other document setting out terms exchanged between the Buyer and Contract Resources (unless expressly agreed otherwise in writing by Contract Resources). For the avoidance of doubt, any terms attached to, or referred

to in, any Purchase Order issued by the Buyer (irrespective of whether such Purchase Order was issued after receipt by the Buyer of these Terms) shall be of no force and effect.

30. RIGHTS OF THIRD PARTIES

Nothing in this Contract is intended to confer a benefit upon or be enforceable by any third party under *the Contracts (Privity) Act 1982*.