

TERMS AND CONDITIONS

1. Definitions

- 1.1. "RCL" means Roadcone Consultancy Limited its successors and assigns or any person acting on behalf of and with the authority of Roadcone Consultancy Limited.
- 1.2. "Customer" means the person/s requesting RCL to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3. "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by RCL in the course of it conducting, or supplying to the Customer, any Services.
- 1.4. "Services" means all Services supplied by RCL to the Customer at the Customer's request from time to time.
- 1.5. "Price" means the price payable for the Services as agreed between RCL and the Customer in accordance with clause 4 of this contract.

2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Services.
- 2.2. These terms and conditions may only be amended with RCL's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and RCL.

3. Change in Control

- 3.1. The Customer shall give RCL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by RCL as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1. At RCL's sole discretion the Fee shall be either:

- a. as indicated on any invoice provided by RCL to the Customer; or
 - b. the Fee as at the date of delivery of the Services/Equipment according to RCL's current Rate Card; or
 - c. RCL's quoted price which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;
- 4.2. In the event that Services to be provided are dependent on the satisfactory performance of other organisations not under the control of RCL, any costs resulting from delays caused by non-performance or unsatisfactory performance by such other organisations shall be charged to the Customer.
- 4.3. The Fee will be payable by the Customer on the date/s determined by RCL, which may be:
- a. before delivery of the Services as stated in a quotation provided by RCL;
 - b. by way of instalments/progress payments in accordance with any payment schedule provided by RCL;
 - c. the date specified on any invoice or other form as being the date for payment; or
 - d. failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by RCL
- 4.4. Unless otherwise stated the Fee does not include GST. In addition to the Fee the Customer must pay to RCL an amount equal to any GST RCL must pay for any supply by RCL under this or any other agreement for providing RCL's **Services**. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Fee. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

5. Delivery of Services

- 5.1. Subject to clause 5.5 it is RCL's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.2. The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that RCL claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond RCL's control, including but not limited to:
- a. any failure by the Customer to:
 - i. make a selection; or

- ii. have the site ready for the Services; or
- iii. notify RCL that the site is ready;
- iv. meet its obligations to RCL under the Health & Safety at Work Act 2015;

b. non-performance or inadequate performance by other trades.

5.3. Any time or date given by RCL to the Customer is an estimate only. The Customer must still accept delivery of the **Services** even if late and RCL will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Limitation of Liability

6.1. RCL shall not be liable to the Customer in contract, tort or otherwise for more than twice the fee charged by RCL for Services provided.

7. Access

7.1. The Customer shall ensure that RCL has clear and free access to the work site at all times to enable them to undertake the Services. RCL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the reckless act or omission of RCL.

8. Accuracy of Customer's Plans and Measurements

8.1. RCL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, RCL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

8.2. In the event the Customer gives information relating to measurements and quantities of the Incidental Items required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or RCL places an order based on these measurements and quantities. RCL accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

9. Defects/Errors and Omissions

- 9.1. The Customer shall within seven (7) days of provision of the Services (time being of the essence) notify RCL of any alleged defect or failure to comply with the description or quote. The Customer shall afford RCL an opportunity to remedy the Services provided within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions the Services shall be presumed to be in accordance with the terms and conditions.
- 9.2. For defective Services, RCL's liability is limited to rectifying the Services provided that the Customer to a value of no more than twice the fee charged by RCL for the Services.

10. Warranty

- 10.1. Subject to the conditions of warranty set out in Clause 10.2 RCL warrants that if any defect in any workmanship of RCL becomes apparent and is reported to RCL within seven (7) days of the date of delivery (time being of the essence) then RCL will (at RCL's sole discretion) remedy the defective workmanship.
- 10.2. The conditions applicable to the warranty given by Clause 10.1 are:
- a. the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i. failure on the part of the Customer to follow any instructions or guidelines provided by RCL; or
 - ii. any use of any Services otherwise than for any application specified on a quote or order form; or
 - b. in respect of all claims RCL shall not be liable to compensate the Customer for any delay in remedying the workmanship or in properly assessing the Customer's claim.

11. Consumer Guarantees Act 1993

- 11.1. If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by RCL to the Customer.

12. Intellectual Property

- 12.1. Where RCL has designed, drawn or otherwise created any documents in delivery of the Services, then the copyright in any designs and drawings and documents shall remain the property of RCL.
- 12.2. The Customer warrants that all designs, specifications or instructions given to RCL will not cause RCL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify RCL against any action taken by a third party against RCL in respect of any such infringement.
- 12.3. The Customer agrees that RCL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs or drawings which RCL has created in providing the Services.

13. Default and Consequences of Default

- 13.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month above the RCL overdraft rate (and at RCL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2. If the Customer owes RCL any money the Customer shall indemnify RCL from and against all costs and disbursements incurred by RCL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and client basis, RCL's collection agency costs, and bank dishonour fees).
- 13.3. Without prejudice to any other remedies RCL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions RCL may suspend or terminate the supply of Services to the Customer. RCL will not be liable to the Customer for any loss or damage the Customer suffers because RCL has exercised its rights under this clause.
- 13.4. Without prejudice to RCL's other remedies at law RCL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to RCL shall, whether or not due for payment, become immediately payable if:
 - a. any money payable to RCL becomes overdue, or in RCL's opinion the Customer will be unable to make a payment when it falls due;
 - b. the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

- c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Compliance with Laws

- 14.1. The Customer and RCL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 14.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 14.3. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

15. Cancellation

- 15.1. RCL may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. RCL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2. In the event that the Customer cancels delivery of Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by RCL as a direct result of the cancellation (including, but not limited to, any loss of profits).

16. Dispute Resolution

- 16.1. All disputes and differences between the Customer and RCL touching and concerning this agreement shall be referred to mediation should the parties not be able to reach agreement following 10 days of negotiations in good faith. If the parties cannot agree a mediator to be appointed then either party may seek the appointment of a mediator by the President of the New Zealand Law Society.

17. Privacy Act 2020

- 17.1. The Customer authorises RCL or RCL's agent to:
 - a. access, collect, retain and use any information about the Customer;
 - i. (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or

- ii. for the purpose of marketing products and services to the Customer.
- b. disclose information about the Customer, whether collected by RCL from the Customer directly or obtained by RCL from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

17.2. Where the Customer is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 2020.

17.3. The Customer shall have the right to request RCL for a copy of the information about the Customer retained by RCL and the right to request RCL to correct any incorrect information about the Customer held by RCL.

18. Construction Contract Act 2002

18.1. In respect of any Services provided under a Construction Contract as defined by the Construction Contract Act 2002: The Customer hereby expressly acknowledges that:

- a. RCL has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - i. the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - ii. a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - iii. the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to RCL by a particular date; and
 - iv. RCL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- b. if RCL suspends work, it:
 - i. is not in breach of contract; and
 - ii. is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and

- iii. is entitled to an extension of time to complete the contract; and
 - iv. keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- c. if RCL exercises the right to suspend work, the exercise of that right does not:
- i. affect any rights that would otherwise have been available to RCL under the Contract and Commercial Law Act 2017; or
 - ii. enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of RCL suspending work under this provision.

19. General

- 19.1. The failure by RCL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RCL'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.
- 19.2. 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.
- 19.3. RCL shall be under no liability to the Customer beyond twice the fee paid by the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by RCL of these terms and conditions.
- 19.4. The Customer shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Customer by RCL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5. RCL may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.6. The Customer agrees that RCL may amend these terms and conditions at any time. If RCL makes a change to these terms and conditions, then that change will take effect from the date on which RCL notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for RCL to provide Services to the Customer.



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- 19.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from RCL on request.

Accepted by: (signature and printed name)

Role / Title:

On behalf of: (Organisation name)

Date: