

## Terms of Trade

### 1 Acceptance

- 1.1 Engaging the Contractor to carry out Work or acceptance of a Quote provided by the Contractor constitutes acceptance by the Client of these terms. These terms will apply to all services provided by the Contractor (unless otherwise agreed in writing).

### 2 Contractor Responsibilities

- 2.1 The Contractor will:
- (a) carry out the Work with reasonable skill and care, in accordance with the plans and specifications (if any), the Building Act 2004, the Building Code and any building consents issued in respect of the Work; and
  - (b) comply with all health and safety legislation in carrying out the Work, including having all appropriate site documentation carried out and checked on a regular basis.

### 3 Client responsibilities

- 3.1 Unless otherwise agreed in writing, the Client is responsible for:
- (a) ensuring that all plans and specifications supplied to the Contractor in respect of the Work are accurate;
  - (b) providing any materials, plant, and equipment required for the Work expressed to be 'client supplied' or 'owner supplied', and ensuring that such materials comply with the Building Code and are fit for purpose, and all plant and equipment complies with all health and safety legislation, codes and requirements;
  - (c) surveying the Site and advising the Contractor of boundaries and the specific location of underground utilities;
  - (d) ensuring that it has sufficient title or other legal entitlement to the Site to allow the Work to be carried out, and that the Contractor has sufficient access to the Site to carry out the Work. If the Client fails to provide sufficient access and causes the Work to be delayed an extension of time to the Finish Date shall be granted;
  - (e) advise the Contractor of any particular hazards relating to the Site, and take all practicable steps to ensure the Client's own safety throughout the Work and cooperate fully in implementing the Contractor's health and safety and environmental policies and procedures and obligations under the relevant health and safety legislation;
  - (f) ensuring that it has sufficient funds or finance to meet its financial obligations when they fall due (and the Contractor may at any time (whether before or after the Start Date) require that proof of such funds or finance is provided); and
  - (g) obtaining all necessary consents for the Work (including for any Variations) and for obtaining a code compliance certificate (if required) when the Work is complete. (To enable the Contractor to comply with its obligations above, the Contractor may require that the Client provides it with a copy of all necessary consents before commencing the Work or any Variation.)

#### **4 Start Date and Completion Date**

- 4.1 Subject to receiving sufficient access as set out above, the Contractor will commence the Work on the Start Date, and complete the Work by the Completion Date, in each case subject to any extensions of time to which it is entitled under clause 8.

#### **5 Payment**

- 5.1 Invoices will be submitted on certain milestones as set out in the Quote. If milestones are not provided for in the Quote, the Contractor will issue invoices on a regular basis. If the Work is delayed or suspended for any reason outside the Contractor's control, it may render an invoice at the time a relevant milestone would otherwise have been achieved. Invoices become a receipt on payment in full.
- 5.2 All payments for fixed sum work are to be made within 30 days after the date of the invoice. Payments are to be made by electronic funds transfer to the Contractor's nominated account unless agreed otherwise.
- 5.3 All payments for hourly rate work are to be made within 7 days after the date of the invoice. Payments are to be made by electronic funds transfer to the Contractor's nominated account unless agreed otherwise.
- 5.4 Any amount which is not paid within due will incur interest at the rate of 2% per month compounding daily on the outstanding balance (both before or after any judgement, and in addition to any other rights and remedies). The Contractor also reserves the right to claim the costs of and incidental to collecting any debt.
- 5.5 If the Quote provides for a deposit, and the deposit is not paid in full 7 days before the Work is due to start, the Contractor may without further notice cancel the contract for the Work, and such cancellation is without prejudice to any other rights and remedies.
- 5.6 The Contractor reserves the right to invoke the Construction Contracts Act 2002 (CCA) in respect of any services pursuant to these terms to which the CCA may apply.
- 5.7 If an invoice is rendered in accordance with the payment claim provisions in the CCA, the Client is to provide a payment schedule which complies with the requirements of the CCA to the Contractor within 3 Working Days of service of the payment claim. If a payment claim is not provided within this period, the Client is liable to pay the whole amount of the payment claim and cannot dispute any sum in that payment claim.

#### **6 Variations**

- 6.1 The Client may request variations to the Work. With the exception of the Variations set out in clause 6.3, all variations must be in writing and contain the following:
- (a) a description of the work required under the Variation;
  - (b) any required amendments to the consents as issued or any additional approvals, consents or licences that will be required;
  - (c) any agreed adjustment to the Contract Price and/or the Completion Date for the Work.
- 6.2 Unless otherwise agreed, the Client may not request a Variation omitting or reducing the Work to be performed.
- 6.3 The Contractor is entitled to claim a Variation for:
- (a) any emergency works required for health and safety or environmental reasons;

- (b) additional work and/or changes to the Work caused by any consent requirements;
- (c) unforeseen physical conditions, substitutions of any materials, wages and price changes; or
- (d) any increase in costs arising from a failure or delay on the Client's part in complying with these terms.
- (e) no allowances have been made in the Contract Price for the handling of hazardous substances (including asbestos), and the Contractor is also entitled to claim a Variation for any such costs.

## **7 Subcontractors:**

- 7.1 The Contractor may subcontract the whole or any portion of the Work. The Contractor will be responsible for all work of its subcontractors and for ensuring that subcontractors have appropriate insurance in place.

## **8 Delay and extensions of time**

- 8.1 The Contractor shall not be liable for any delay in carrying out the Work due directly or indirectly to circumstances reasonably outside its control, including disputes with subcontractors, bad weather, force majeure, pandemics or epidemics, accidents, fire, shortage of labour and/or materials, labour disputes, variations, failure of suppliers to deliver, acts of any government, territorial authority or similar body, or unforeseen site conditions including the presence of asbestos and other contaminants.
- 8.2 If an extension of time is required to the Completion Date due to any of the above reasons or any other reason beyond the Contractor's reasonable control, the Contractor shall provide written notice to the Client of any such extension reasonably promptly after the Contractor becomes aware of the delay, together with details of the new Completion Date.

## **9 Insurance**

- 9.1 The Client is responsible for insuring the Work (and the Contractor may at any time require that proof of such insurance is provided). The Contractor will arrange public liability insurance up to \$2,000,000 against liability for loss or damage to any property, or injury or death or illness which arises from carrying out the Work.

## **10 Defects Warranty**

- 10.1 If the Work relates to a household unit, the Client may give notice of any defect within 12 months of completion of the Work, and the Contractor will remedy those defects within a reasonable time of notification. The Client must notify the Contractor in writing of the defect as soon as possible after the defect becomes apparent.
- 10.2 The Contractor is not liable for any defect within reasonable tolerances, for any defect caused by or arising out of the actions of any person outside the Contractor's control, fair wear and tear, or failure to maintain the Work.
- 10.3 These terms do not limit the implied warranties as set out in s362I to s362K of the Building Act 2004.

## **11 Suspension and termination**

- 11.1 The Contractor may suspend the Work by notice if the Client defaults in any of its obligations under these terms, including failing or refusing to pay any invoiced amount in full by the due date for its payment. Such suspension is without prejudice to any other right to which the Contractor might be entitled.

11.2 The Contractor may terminate its obligations under these terms if at any time the Client becomes bankrupt, goes into liquidation, or has a receiver or statutory manager appointed, or defaults in its obligations under these terms and does not remedy that default within 5 Working Days of receiving a notice requiring remedy.

11.3 On termination under clause 11.2 all monies owed to the Contractor will be payable immediately.

## **12 Contractor Property on Site and Risk in the Work**

12.1 The Client acknowledges that:

- (a) the legal, equitable and beneficial ownership and title to any plant, equipment or materials brought onto the Site by the Contractor remains vested in the Contractor at all times;
- (b) title in all materials supplied as part of the Work remains vested in the Contractor until all amounts owing to the Contractor have been paid in full.

12.2 In the event of non-payment, the Contractor shall be entitled, without prejudice to any other rights or remedies it has, to enter the Site for the purposes of recovering and taking possession of the property described in clause 12.1 (whether or not such property has been incorporated into the Work) and/or commencing court proceedings to recover damages howsoever due to the Client's default.

12.3 To secure such obligations, for the purposes of the Personal Property Securities Act 1999 (PPSA), the Client agrees that a security interest is granted of the property described in clause 12.1 (and all proceeds of that property). All payments received may be applied by the Contractor in such manner as is desirable to preserve any purchase money security interest in that property. The Client agrees that nothing in section 114(1)(a), 116, 117 (1)(a), 120(2), 121, 125 to 127, 129, 131, 133 and 134 of the PPSA applies, and waives the right to receive a verification statement or financing change statement in respect of any security interest.

12.4 Risk in the work will pass to the Client when the Work is completed at the site.

## **13 Limitation on liability**

13.1 In addition to the other provisions relating to liability in these terms, the Contractor shall have no liability to the Client other than in relation to direct reasonably foreseeable losses incurred by the Client as a result of the Contractor's breach of these terms or the Quote. The Contractor is not liable for any loss, liability or costs incurred by or any injuries suffered by the Client or any other person which are an unavoidable result of carrying out the Work or remedying any defects in accordance with these terms.

13.2 Other than in relation to defects in the Work as referred to in clause 10.1, the Client is to lodge any claims with the Contractor within 3 months of the date of completion of the relevant part of the Work otherwise any such claim will be regarded as invalid. Any claim submitted must be sufficiently detailed so as to clearly identify what aspect of the Work is defective.

## **14 Signage**

14.1 The Client agrees that the Contractor has the right to erect signage on the Site advertising itself during the period of the Work unless otherwise agreed.

## **15 Notices**

15.1 All notices are to be in writing and hand delivered or sent by post or email to the addresses set out in the Quote. The address for service and postal address for the Contractor is the physical address set out in the Quote.

- 15.2 A notice is deemed to be received:
- (a) if personally delivered, when delivered; or
  - (b) if posted, 5 working days after posting; or
  - (c) if sent by email, when the email leaves the sender's communications system, provided that the sender:
    - i does not receive any error message relating to the sending of the email; or
    - ii receives confirmation that the email was delivered (which may include an automated delivery receipt from the recipient's communications system).
- 15.3 Despite clause 15.2, any notice received after 5pm, or received on a day that is not a Working Day, is deemed not to have been received until 9am on the next Working Day.

## **16 Dispute Resolution**

- 16.1 If there is any dispute relating to these terms or the Work, the party raising the dispute must give the other party written notice specifying particulars of the dispute.
- 16.2 If negotiations between the parties do not resolve the dispute, either party may refer a dispute to adjudication under the CCA or bring a claim before the Disputes Tribunal or the High Court, as appropriate.

## **17 Privacy Act [1993/2020]**

- 17.1 The Client irrevocably agrees that the Contractor is authorised to:
- (a) Access, collect and retain any information it may require about the Client; and
  - (b) Use that information for the purpose of providing or obtaining a credit reference, debt collection, notification of a default, marketing or meeting its anti-money laundering obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or any amendments to that Act.
- 17.2 The Client must notify the Contractor of any changes in circumstances that may affect the accuracy of the information provided by the Client.
- 17.3 The Client has the right of access to and collection of any personal information held by the Contractor.

## **18 General**

- 18.1 The Quote may be executed and exchanged in any number of counterparts (including copies and scanned e-mail copies) each of which is deemed to be an original, but all of which together are to constitute a binding and enforceable agreement between the parties.
- 18.2 If any clause or part of a clause of the terms is held to be invalid or unenforceable for whatever reason that part shall be severed from these terms and the remaining provisions shall remain in full force and effect.
- 18.3 The Contractor can vary these terms at any time by notification to the Client. The Client cannot vary these terms other than with the Contractor's express written consent.

## **19 Definitions**

In these terms:

**Client** means the person(s) stated as the Client(s) in the Quote.

**Completion Date** means the expected date on which the Contractor reasonably believes the Work will be completed, subject to extensions of time, as stated in the Quote.

**Contractor** means

**Contract Price** means the price for the Work calculated in accordance with the Quote and subject to any adjustments provided for in these terms.

**Including** does not imply limitation.

**Site** means the site address at which the Work is to be carried out, as stated in the Quote.

**Start Date** means the expected start date at which the Contractor reasonably believes physical work will commence on Site, as stated in the Quote.

**Variation** means a variation to the Work under section 6.

**Work** means the work stated in the Quote (subject to consents and Variations) at the Site.

**Working Day** has the meaning given in the Construction Contracts Act 2002.