

Revolution Concrete Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting RCL to provide the Works as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.2 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using RCL's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.4 "Intended Use" means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.5 "Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST" where applicable) for the Works as agreed between RCL and the Client in accordance with clause 5 below.
- 1.7 "RCL" means Revolution Concrete Limited, its successors and assigns.
- 1.8 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by RCL to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.9 "Worksite" means the address nominated by the Client to which the Materials are to be supplied by RCL.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, RCL reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 5.2. In all such cases RCL will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as RCL and the Client agree to such changes;
 - (b) the supply of Works on credit shall not take effect until the Client has completed a credit application with RCL and it has been approved with a credit limit established for the account;
 - (c) if RCL has been requested by the Client to prepare a quotation that involves multiple Worksite visits or third-party involvement (including, but not limited to, engineers, surveyor, or local councils), all costs involved will be charged to the Client irrespective of whether or not the Works go ahead;
 - (d) in the event that:
 - (i) the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, RCL reserves the right to refuse delivery; and
 - (ii) RCL is required to provide the Works urgently, that may require RCL's staff to work outside normal business hours (including but not limited to working, through lunch breaks, nights, weekends and/or public holidays) then RCL reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between RCL and the Client.
- 2.5 Any advice, recommendation, information, assistance, or service provided by RCL in relation to the Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on RCL's own knowledge and experience and shall be accepted without liability on the part of RCL. Where such advice or recommendations are not acted upon then RCL shall require the Client or their agent to authorise commencement of the Works in writing. RCL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that RCL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by RCL in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by RCL in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of RCL; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At RCL's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by RCL to the Client in respect of Works performed or Materials supplied; or
 - (b) RCL's quoted Price (subject to clause 5.2) which shall be binding upon RCL provided that the Client shall accept RCL's quotation in writing within thirty (30) days.
- 5.2 RCL reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, inadequate base preparation (such as high, uneven, soft or low base work), availability of machinery, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.),

prerequisite work by any third party not being completed, lack of required utilities, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes etc.) which are only discovered on commencement of the Works; or

- (d) in the event of increases to RCL in the cost of labour or materials which are beyond RCL's control.

- 5.3 Variations will be charged for on the basis of RCL's quotation, and will be detailed in writing, and shown as variations on RCL's invoice. The Client shall be required to respond to any variation submitted by RCL within ten (10) working days. Failure to do so will entitle RCL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.4 At RCL's sole discretion a fifty percent (50%) non-refundable deposit may be required and is required five (5) working days prior to commencement of the Works.

5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the dates determined by RCL, which may be:

- (a) on completion of the Works;
- (b) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (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 Client by RCL.

5.6 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, RCL reserves the right to treat all retentions as placing the Client's account into default.

5.7 Payment may be made by electronic/on-line banking or by any other method as agreed to between the Client and RCL.

5.8 RCL may in its discretion allocate any payment received from the Client towards an invoice that RCL determines and may do so at the time of receipt or at any time afterwards. On any default by the Client RCL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by RCL, payment will be deemed to be allocated in such manner as preserves the maximum value of RCL's Purchase Money Security Interest (as defined in the PPSA) in the Materials.

5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by RCL nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by RCL is a claim made under the Construction Contracts Act 2002. Nothing in this clause 5.9 prevents the Client from the ability to dispute any invoice.

5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client 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 the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

Provision of the Works

Subject to clause 6.2 it is RCL's responsibility to ensure that the Works start as soon as it is reasonably possible.

The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that RCL claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond RCL's control including but not limited to, poor weather conditions in wetter months or any failure by the Client to:

- (a) make a selection; or
- (b) have the Worksite ready for the Works; or
- (c) notify RCL that the Worksite is ready.

At RCL's sole discretion, the cost of delivery is included in the Price. RCL may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

Any time specified by RCL for delivery of the Works is an estimate only and RCL will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that RCL is unable to supply the Works as agreed solely due to any action or inaction of the Client, then RCL shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

Risk

If RCL retains ownership of the Materials under clause 13 then:

- (a) where RCL is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by RCL or RCL's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); and
- (b) unless otherwise agreed, where RCL is to both supply and install Materials then RCL shall maintain a Contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

Notwithstanding the provisions of clause 7.1 if the Client specifically requests RCL to leave Materials outside RCL's premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.

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

All potential surfaces are subject to an inspection by RCL prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then RCL reserves the right to halt the Works until such time as it is agreed between RCL and the Client as to the additional cost in further preparation of the surface in order to make it fit for the Works to commence. The additional cost shall be charged as a variation to the quotation as per clause 5.2.

Detailed drawings of any services that will be embedded in the Works are to be provided to RCL prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by RCL for damage to the services or any other element embedded in the Works.

RCL gives no guarantee (expressed or implied) that Materials supplied will match colour samples provided in colour pictures. RCL will make every effort to match colour samples to the Materials supplied but will not be liable in any way whatsoever for colour samples differing from the Materials supplied and all colour matching will be offered to eye matching standards only.

The Client acknowledges and accepts that:

- (a) concrete is a porous material and as a consequence RCL cannot be held responsible for holes and pinholes, however numerous, that appear on the surface after completion of the Works;
- (b) RCL can only visually check the concrete and cannot guarantee the mix is free of contamination. If the concrete supply is divided into more than one truck RCL cannot guarantee the concrete mix and design is consistent between trucks;
- (c) where RCL is engaged to repair and/or replace any damaged Materials surface, that RCL is only responsible for that portion of Works. RCL does not do at any stage accept any liability in respect of previous Works carried out by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify RCL against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising;

10. RCL shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

11. Prior to RCL commencing any work the Client must advise RCL of the precise location of all underground services on the Worksite and clearly mark

(d) Materials supplied may (including, but not limited to, concrete, exposed aggregate and pebbles etc.):

- (i) exhibit variations in mix design, shade, colour, texture, surface, and finish;
 - (ii) fade or change colour over time;
 - (iii) expand, contract, crack, or distort as a result of exposure to heat, cold, weather;
 - (iv) mark or stain if exposed to certain substances; and
 - (v) be damaged or disfigured by impact or scratching.
- (e) as variations of colour and texture are inherent in the Materials, RCL shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product;
- (f) in the event asbestos or any other toxic substances are discovered at the Worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify RCL against any costs incurred by RCL as a consequence of such discovery. Under no circumstances will RCL handle removal of asbestos product;
- (g) it is the Client's responsibility to:
- (i) ensure that the formwork, sub-base, or base course levels have a minimum of one percent (1%) gradient and/or crossfalls to enable any water to drain away. RCL shall not be liable for any "water ponding" in the event that the gradient is less than the required levels as per this clause; and
 - (ii) organise and be liable for all costs associated with protecting the surface and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the surface is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- (h) RCL gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of the Materials based on such as:
- (i) hairline cracking of concrete;
 - (ii) damage caused by contact with chemicals, solvents, oils, or any other substances; or
 - (iii) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- (i) RCL shall not be liable for:
- (i) the shrinkage of Materials on any ground works not prepared by RCL;
 - (ii) any additional cost for removal of plant or tree root growth presence that may occur after completion of the Works and RCL can offer no guarantee against such recurrence;
 - (iii) any movement due to consolidation or the movement of soil below the treated surface; or
 - (iv) any defect in the Works if the Client does not follow RCL's care instructions.

RCL shall not be liable for any defect in the Works if the Client does not follow RCL's recommendations, including:

- (a) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
- (b) that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably five (5) days; and
- (c) that no heavy items are to be placed on the concrete area for a minimum of twenty-four (24) hours.

The Client will only inspect or view the floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the finished concrete surface that can only be viewed from a crouching or kneeling position will not be considered defects.

Whilst RCL will take all due care to avoid contamination of the finished surface, RCL accepts no responsibility for contamination by other trades people or natural contaminants such as dust, insects or hair which may be present at the Worksite.

Measurement of the Works

At the completion of the Works the Client or the representative of the Client shall be in attendance and the Works shall then be duly measured. In the absence of either the Client or their representative RCL shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same, then it shall be deemed acceptance of the same and the Works completed.

Worksite Access and Condition

It is the intention of RCL and agreed by the Client that:

- (a) the Client shall ensure that RCL has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). RCL shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of RCL;
- (b) it is the Client's responsibility to provide RCL, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities;
- (c) the Client shall ensure that access is suitable to accept the weight of laden trucks, or other heavy equipment as may be deemed necessary by RCL. The Client agrees to indemnify RCL against all costs incurred by RCL in recovering such vehicles in the event they become bogged or otherwise immovable;
- (d) arrangements are made (at the Client's expense) for all parking permits where no free parking facilities are available. Furthermore, any parking infringements and tickets received by RCL shall be charged back to the Client; and
- (e) the Client shall contact adjoining neighbours and gain their permission to remove any walls or fences on boundaries and unless otherwise agreed, it shall be the Client's responsibility to organise either temporary fencing and/or security guards to secure the Worksite during the performance of the Works by RCL and shall be liable for all costs associated in taking all reasonable precautions to protect against destruction or damage by way of vandalism or theft. Failure to comply with this clause 9.1(e) in the event that the Worksite is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.

Where RCL requires that plant, machines, Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply RCL a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft, or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

The Client agrees to be present at the Worksite when and as reasonably requested by RCL and its employees, contractors and/or agents.

Worksite Inductions

(a) in the event the Client requires an employee or sub-contractor of RCL to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay RCL's standard (and/or overtime, if applicable) hourly labour rate; or

(b) where RCL is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out RCL's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by RCL.

Insurance

RCL shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

Underground Locations

Prior to RCL commencing any work the Client must advise RCL of the precise location of all underground services on the Worksite and clearly mark

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- the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 11.2 Whilst RCL will take all care to avoid damage to any underground services the Client agrees to indemnify RCL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.
- 12. Compliance with Laws**
- 12.1 The Client 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 Works, including any WorkSafe health and safety laws relating to any other relevant safety standards or legislation pertaining to the Works.
- 12.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Works; and
- (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 12.3 Where the Client has supplied products for RCL to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in RCL's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then RCL shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 5.2.
- 12.4 The Client shall obtain (at the expense of the Client) all licenses, council permits, and approvals that may be required for the Works.
- 12.5 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), RCL agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
- 13. Title**
- 13.1 RCL and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid RCL all amounts owing to RCL; and
- (b) the Client has met all of its other obligations to RCL.
- 13.2 Receipt by RCL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to RCL on request;
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for RCL and must pay to RCL the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
- (c) the production of these terms and conditions by RCL shall be sufficient evidence of RCL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with RCL to make further enquiries;
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for RCL and must pay or deliver the proceeds to RCL on demand;
- (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of RCL and must sell, dispose of or return the resulting product to RCL as it so directs;
- (f) unless the Materials have become fixtures the Client irrevocably authorises RCL to enter any premises where RCL believes the Materials are kept and recover possession of the Materials;
- (g) RCL may recover possession of any Materials in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of RCL; and
- (i) RCL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 14. Personal Property Securities Act 1999 ("PPSA")**
- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by RCL to the Client and the proceeds from such Materials as listed by RCL to the Client in invoices rendered from time to time.
- 14.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RCL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; indemnify, and upon demand reimburse, RCL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of RCL; and
- (d) immediately advise RCL of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.3 RCL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by RCL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by RCL under clauses 14.4 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Security and Charge**
- 15.1 In consideration of RCL agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies RCL from and against all RCL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RCL's rights under this clause.
- 15.3 The Client irrevocably appoints RCL and each director of RCL as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.
- 16. Defects and Returns**
- 16.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify RCL of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford RCL an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which RCL has agreed in writing that the Client is entitled to reject, RCL's liability is limited to either (at RCL's discretion) replacing the Materials or repairing the Materials.
- Materials will not be accepted for return other than in accordance with 16.1 above.
- 17. Consumer Guarantees Act 1993**
- If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Materials by RCL to the Client.
- 18. Intellectual Property**
- The Client agrees that RCL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which RCL has created for the Client.
- 19. Default and Consequences of Default**
- 19.1 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 (and at RCL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes RCL any money the Client 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 own client basis, RCL's collection agency costs, and bank disbursement fees).
- 19.3 Further to any other rights or remedies RCL may have under this Contract, if a Client has made payment to RCL, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by RCL under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- Without prejudice to RCL's other remedies at law RCL shall be entitled to cancel all or any part of any order of the Client 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 Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by RCL;
- (c) the Client becomes insolvent or bankrupt, 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20. Cancellation**
- Without prejudice to any other rights or remedies RCL may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach) in respect of this Contract within ten (10) working days of receipt by the Client of such notice(s) then RCL may suspend or terminate the supply of the Works. RCL will not be liable to the Client for any loss or damage the Client suffers because RCL has exercised its rights under this clause.
- RCL may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice RCL shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to RCL for Works already performed. RCL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- In the event that the Client cancels the delivery of Works the Client 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).
- 21. Privacy Policy**
- All emails, documents, images or other recorded information held or used by RCL is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. RCL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. RCL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by RCL that may result in serious harm to the Client, RCL will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to RCL in respect of Cookies where the Client utilises RCL's website to make enquiries. RCL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to RCL when RCL sends an email to the Client, so RCL may collect and review that information ("collectively Personal Information").
- If the Client consents to RCL's use of Cookies on RCL's website and later wishes to withdraw that consent, the Client may manage and control RCL's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Client authorises RCL or RCL's agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by RCL from the Client 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 Client.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from RCL, a copy of the Personal Information about the Client (retained by RCL) and the right to request that RCL correct any incorrect Personal Information.
- 21.6 RCL will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.7 The Client can make a privacy complaint by contacting RCL via e-mail. RCL will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 22. Suspension of Works**
- 22.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client 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 Client; and:
- (i) the payment is not paid in full by the due date for payment in accordance with clause 5.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to RCL by a particular date; and
- (iv) RCL has given written notice to the Client 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 Client or by any person claiming through the Client; 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 Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of RCL suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes RCL from continuing the Works or performing or complying with RCL's obligations under this Contract, then without prejudice to RCL's other rights and remedies, RCL may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by RCL as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to a right conferred by this Contract, RCL suspends the Works and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, RCL shall be entitled to terminate the Contract, in accordance with clause 20.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. Trusts**
- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not RCL may have notice of the Trust, the Client consents with RCL as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of RCL (RCL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 25. General**
- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 25.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 25.3 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 Auckland Courts of New Zealand.
- 25.4 Subject to the CGA, RCL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RCL of these terms and conditions (alternatively RCL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.5 RCL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of RCL.
- 25.7 RCL may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of RCL's sub-contractors without the authority of RCL.
- 25.8 The Client agrees that RCL may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for RCL to provide Works to the Client.
- 25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, nuclear or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to RCL.
- 25.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.