



## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

TEN-FRM-13 (NZ)

Revision Date: 13 Nov 2018

### 1. Definitions and Interpretation

In these Conditions and elsewhere in the Contract unless a contrary intention appears the following shall mean:

**Anti-Bribery and Anti-Corruption Legislation** includes any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of RCR and the Client) including but not limited to the Crimes Act 1961 (NZ), the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001(NZ) and the Bribery Act 2010(UK).

**Client** means the person or corporation set out in Item 2 of the Contract Particulars and/or RCR Invoice which is the buyer of the Goods.

**Completion Date** means the date specified in Item 7 of the Contract Particulars or any extension thereof agreed in writing between the parties on which RCR must deliver the Goods.

**Conditions** mean these standard RCR terms and conditions.

**Contract** means the agreement between the Client and RCR evidenced by the Conditions, the Contract Particulars and/or RCR Invoice, and all other documents which are listed in Item 9, of the Contract Particulars or incorporated by written reference into the Contract by RCR. The Conditions take precedence over all other documents including those listed in Item 9 and any other documents provided by the Client.

**Contract Price** means the total price submitted by RCR either as a lump sum fixed price, schedule of rates, cost plus or a combination of these as detailed in the Contract Particulars.

**Force Majeure** means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather conditions, industrial disputes (except where restricted to employees of RCR), sabotage or commotion, act or omission of the Client, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of RCR.

**Goods** means the goods, products, materials or equipment supplied by RCR in accordance with this Contract including as specified in Item 3 of the Contract Particulars and/or RCR Invoice.

**Intellectual Property** means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method or confidential information.

**PPSA** means the Personal Property Securities Act 1999.

**RCR** means the subsidiary of RCR Tomlinson Ltd (ACN 008 898 486) described in Item 1 of the Contract Particulars or if no description has been provided, the entity named in the RCR Invoice.

**RCR Invoice** means an invoice setting out the Goods supplied to the Client by RCR and claiming payment for the supply of those Goods.

**Works** means the scope of works being tendered for as detailed in the Contract, which is inclusive of the Goods.

### 2. General

2.1 The Client has requested that RCR supply the Goods and RCR agrees to supply the Goods in accordance with the Contract.

2.2 These conditions (which can only be waived in writing and signed by an authorised representative of RCR) prevail over all conditions of the Client's order or other documents.

2.3 If additional terms and/or conditions are attached to, incorporated into or accompany the Client's order, those terms and/or conditions are not accepted by RCR and do not form part of the Contract unless expressly accepted in writing and signed by an authorised representative of RCR.

2.4 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

### 3. Deemed Acceptance

In the absence of a written acknowledgement from the Client, the supply of the Goods to the Client will be deemed acceptance of the Contract.

### 4. Price

4.1 The Client shall pay RCR for the Goods in accordance with the Contract Price and time for payment listed in Item 4 of the Contract Particulars and/or RCR Invoice.

4.2 Unless otherwise stated, the price quoted by RCR is net and exclusive of Goods and Services Tax (GST) and any other relevant taxes of any nature whatsoever, together with penalties, fines or interest thereon.

### 5. Payment

Except as otherwise agreed by RCR in writing, the Client, shall pay all invoiced amounts in New Zealand dollars, without right of set off, within thirty (30) days from the date of the RCR Invoice.

If the Client fails to pay RCR the full amount stated in the RCR Invoice in accordance with this clause, then RCR will charge interest on the amount unpaid by the Client at a rate of 2% over RCR's commercial bank overdraft rate.

### 6. Standard to Conform to Specifications

RCR shall supply the Goods in accordance with the specifications, drawings, samples or other description (if any) furnished by the Client and contained in Item 9 of the Contract Particulars.

### 7. Warranty

7.1 RCR warrants that:

7.1.1 the Goods will be of merchantable quality and be free from substantial defect in workmanship;

7.1.2 any Goods manufactured or fabricated by RCR will perform to the standard agreed by the parties and as set out in Items 3 and 9 of the Contract Particulars;

7.1.3 RCR warrants the Goods for the period stated in Item 6 of the Contract Particulars and where no period is stated, 3 months following receipt of the Goods and only insofar as the defect is a result of faulty workmanship of RCR or the use of substandard materials by RCR. If the Client finds a defect with the Goods the Client must notify RCR in writing of the defect within seven (7) days of discovery of the defect and must take all reasonable precautions to prevent the use of the Goods;

7.1.4 RCR will be responsible for the costs of actual rectification/replacement works only and any associated costs (including removal or transportation costs) shall be borne by the Client; and

7.1.5 if RCR uses a subcontractor or supplier or other person to perform any work under this Contract (Other Person) any work, labour and services carried out by the Other Person shall only be



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warranted by RCR to the degree that the Other Person indemnifies RCR.

### 8. Defects Liability

- 8.1 The defects liability period will commence from the Completion Date or upon issue of the certificate of practical completion for the Works, whichever is earlier, and shall be for a period of 12 months, unless otherwise stated in the Contract. Any additional warranty provided by a manufacturer of Goods which RCR has supplied will be passed on to the Client on agreement with the manufacturer.
- 8.2 During the defects liability period, RCR will make good or replace (as the case may be) defective Goods excluding:
- 8.2.1 any interfacing between the Client's equipment, Site, plant or design (unless expressly included as part of the Works and listed in the Contract);
  - 8.2.2 ordinary wear and tear; and
  - 8.2.3 any damage which has been caused or contributed by the Client's negligence or acts or omissions.

### 9. Delivery of Goods, Title and Risk

- 9.1 RCR will deliver the Goods on the date as set out in Item 7 of the Contract Particulars to the place nominated in Item 8 of the Contract Particulars.
- 9.2 On the Client's receipt of the Goods, all risk relating to the Goods passes to the Client. However, if the Client provides any components to RCR for inclusion in the Goods the risk of those components remains with the Client at all times. RCR will use all reasonable care to provide suitable storage of the Client's components but will not be liable for any loss or damage.
- 9.3 It is acknowledged by the Client that RCR fulfils all of its obligations under this Contract once the Goods are delivered by RCR and received by the Client or collected by the Client, whichever the earlier.
- 9.4 Title in the Goods remains with RCR until all sums due and owing by the Client to RCR are paid in full notwithstanding the delivery, receipt, collection or passing of risk to the Client.
- 9.5 Until title of the Goods passes, RCR reserves and retains the following rights in relation to the Goods until all accounts owed by the Client to RCR are fully paid:
- 9.5.1 to enter the Client's premises, or the premises of any associated entity or agent of the Client where the Goods are located, without liability for trespass or any resulting damage and retake possession of the Goods; and
  - 9.5.2 to keep or resell the Goods repossessed under this clause.

### 10. Personal Property Securities Act 1999

- 10.1 In this clause 10 words and expressions which are not defined in these Conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.
- 10.2 The Client acknowledges and grants RCR a security interest in the Goods (and any parts thereof) and any proceeds of those Goods:
- 10.2.1 as security for payment of that part and/or of each other part/s of the Goods;
  - 10.2.2 for any other amounts owing by the Client to RCR from time to time; and

10.2.3 for the performance by the Client of all the Client's other obligations to RCR from time to time.

('Client's Indebtedness and Obligations')

- 10.3 For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for RCR by virtue of section 36(1)(b)(iii), the Client grants to RCR, as security for the Client's Indebtedness and Obligations, a security interest in all of the Client's present and after-acquired property other than that which comprises items or kinds of personal property:
- 10.3.1 in or to which the Client has rights; and
  - 10.3.2 which has not been supplied by RCR to the Client.
- 10.4 The Client agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Contract and that it irrevocably and unconditionally waives all of its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 10.5 The Client irrevocably and unconditionally waives its right to receive a copy of any verification statement received in connection with any financing statement or financing change statement that is registered at any time in relation to the Contract.
- 10.6 The Client agrees to do all things which RCR reasonably requires to:
- 10.6.1 ensure that RCR has a perfected security interest and a perfected purchase money security interest in each part of the Goods to the extent of the purchase price for that part; and
  - 10.6.2 enable RCR to exercise any of its rights or powers under the Contract.
- 10.7 Nothing in the Contract shall be construed as:
- 10.7.1 an agreement to subordinate the security interest created under the Contract in favour of any person;
  - 10.7.2 a consent by RCR to any other security interest attaching (as that term is used in the context of the PPSA) to, or any other security interest subsisting over, any Goods; or
  - 10.7.3 a consent by RCR to any property that is not Goods becoming an accession to any Goods.

### 11. Intellectual Property Rights

RCR retains all intellectual property and ownership rights of such in any Intellectual Property and other information relating to the Works which is created or modified by RCR during the Contract.

RCR hereby grants to the Client a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by RCR, for the purpose of or in connection with the Contract.

The Client acknowledges that RCR will not be responsible for any infringement of any intellectual property of the Client that the Client has in any components, material or additional documents and RCR will not be liable for any claim whatsoever due to RCR's use of the Client's intellectual property.

The Client shall indemnify and hold harmless RCR against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Client to RCR.

### 12. Insurance

RCR shall procure and maintain the insurances as specified in Item 10 of the Contract Particulars.

### 13. Cancellations



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Either party has the right to cancel this Contract because of any event beyond the reasonable control of either party which alters the ability of the cancelling party to fulfil the terms of this Contract.

If RCR cancels this Contract, the Client agrees and acknowledges that it will not prosecute any claim in law or in equity against RCR. The Client agrees if the Client cancels this Contract, it will pay to RCR all outstanding RCR Invoices and that portion of the Works (including Goods provided to the Client) up to the date of cancellation and the Client indemnifies RCR against any losses incurred by RCR as a result of the termination.

### 14. Limitation of Liability

Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total liability of RCR to the Client arising out of or in connection with the Contract for all loss, damage, cost or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than fifty percent (50%) of the Contract Price.

### 15. Consequential Loss

Notwithstanding any other provision of the Contract and to the full extent permitted at law, neither party is liable for any indirect, special, contingent or consequential type losses or damages which includes but is not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.

### 16. Delays

The Client shall reimburse RCR all reasonable costs including but not limited to overheads incurred by RCR for any delays except for delays caused by RCR itself.

If RCR does not deliver the Goods by the Completion Date RCR will pay to the Client as full and final remedy for delay, damages at the rate of 0.1% of the Contract Price per day to a maximum of 5% of the Contract Price in the aggregate. The Client agrees such damages are a genuine and reasonable pre-estimate of loss for delay arising out of the Contract.

### 17. Company's Quotations and Performance

17.1 RCR's quotations shall be valid for the period stated in Item 5 of the Contract Particulars. Where no period is stated in Item 5, then the quotation will expire within thirty (30) days after the date of the quotation.

17.2 Any performance figures or performance parameters in Item 3 of the Contract Particulars or otherwise given by RCR are estimates only. RCR is under no liability for Goods not attaining such figures unless those figures are specifically guaranteed in writing by RCR. Any written guarantees are subject to the recognised tolerances and parameters applicable to the figures.

17.3 RCR is not responsible to the Client or any person claiming through the Client for any loss or damage to the Goods in transit or installation or service, caused by any event of any kind or by any person.

### 18. Storage

RCR reserves the right to make a reasonable charge for storage of the Goods or any component of the Client to be used in manufacture or supply of the Goods, if delivery instructions are not provided by the Client within 14 days of a request by RCR.

### 19. Returned Goods

RCR is not under any duty to accept Goods returned by the Client. If RCR agrees to accept returned Goods from the Client, the Client must return the Goods to RCR at any place directed by RCR and on such other terms as RCR directs.

### 20. Force Majeure

20.1 If performance by RCR of any obligation under the Contract is prevented, restricted or delayed by Force Majeure then RCR shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 20.2.

20.2 If supply is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.

### 21. Dispute Resolution

If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of dispute identifying and providing details of the dispute and entitled Dispute Notice ('Dispute Notice').

Within seven (7) days of receipt of the Dispute Notice representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of Dispute Notice, the General Manager of each of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

### 22. Place of Contract and Governing Jurisdiction

The Contract is governed by the law as stipulated in Item 11 of the Contract Particulars and the parties submit to the non-exclusive jurisdiction of those Courts. If no place is nominated in the Contract Particulars, the jurisdiction and place of contract is New Zealand.

### 23. Anti-Bribery and Corruption

23.1 RCR is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti corruption.

23.2 The Client represents and warrants it complies with Anti-Bribery and Anti-Corruption Legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures to be made available to RCR for inspection on demand.

23.3 The Client represents and warrants it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.

23.4 If the Client becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify RCR in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.

23.5 If RCR, acting reasonably, believes the Client has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, RCR must give the Client written notice of such. If the Client, within 30 days of that written notice, fails



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to show there is no reasonable basis to conclude a breach has occurred, RCR may terminate the Contract without further notice to the Client.



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**CONTRACT PARTICULARS**

**Date:**

<b>Parties</b>	<b>1</b>	<b>RCR</b>	<i>[Insert name of RCR entity]</i>
		<b>RCR's Representative</b>	Attention: Address:  Phone: Fax: Mobile: Email:
	<b>2</b>	<b>Client</b>	<i>[insert name of Client entity]</i>
		<b>Client's Representative</b>	Attention: Address:  Phone: Fax: Mobile: Email:
<b>Goods</b>	<b>3</b>	<b>Goods</b>	
<b>Price and Payment</b>	<b>4</b>	<b>Contract Price</b>	
		<b>Time for Payment</b>	
	<b>5</b>	<b>Time for Acceptance by Client of RCR's Quotation</b>	
	<b>6</b>	<b>Defects Liability Period</b>	[ X ] months from [insert]
	<b>7</b>	<b>Completion Date</b>	
	<b>8</b>	<b>Place of Delivery</b>	
	<b>9</b>	<b>Additional Documents</b>	<i>(For example additional documents may include - List all documents including:</i> <ul style="list-style-type: none"> <li>• <i>schedules</i></li> <li>• <i>specifications</i></li> <li>• <i>annexures</i></li> <li>• <i>drawings</i>)</li> </ul>
	<b>10</b>	<b>Insurances</b>	<input type="checkbox"/> workers compensation in accordance with the applicable legislation; <input type="checkbox"/> professional indemnity where relevant; <input type="checkbox"/> product liability of not less than \$10 million per occurrence; <input type="checkbox"/> public liability of not less than \$10 million per occurrence; <input type="checkbox"/> motor vehicle of not less than \$10 million per occurrence.
<b>11</b>	<b>Jurisdiction</b>	New Zealand	