



STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

MSP 101 F10 (NZ)

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).

Associated Goods means the goods, products, materials or equipment supplied by RCR and associated with RCR's provision of services in accordance with this Contract and specified in Item 3a of the Contract Particulars and/or RCR Invoice.

Associated Goods Fee means the actual cost of Associated Goods plus an amount for margin to RCR specified in Item 4 of the Contract Particulars and/or RCR Invoice.

Client means the Person or corporation set out described in Item 2 of the Contract Particulars or, if no description has been provided, the entity to which RCR is providing the Services.

Completion Date means the date agreed and specified in Item 7 of the Contract or any extension thereof as agreed in writing between the parties on which RCR must complete the Services.

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, Hourly Rate, Associated Goods Fee, schedule of fees, cost plus including disbursements, or a combination of these as detailed in the Contract and in Item 4 of 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.

Hourly Rate(s) means the relevant hourly rate(s) set out in the Contract and in Item 4 of the Contract Particulars (or otherwise the rate that RCR normally charges for work undertaken by the relevant RCR employee(s) at the time the work is undertaken).

Information means documents, data, methods, material, preliminary design, specific requirements, specifications, calculations, test results and any other information provided to RCR by the Client before or during the execution of the Contract.

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 and confidential information.

PPSA means the Personal Property Securities Act 1999.

RCR means the subsidiary of RCR Tomlinson Ltd specified in Item 1 of the Contract Particulars (ABN 81 008 898 486) or, if no description has been provided, the entity named in the RCR Invoice.

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

RCR Plant and Equipment means all goods, products, materials and equipment used by RCR for carrying out the Services other than Associated Goods or which is not intended by RCR to become part of the Works.

Services means all the services and activities RCR has agreed to perform for the Client under its offer and specified in Item 3 of the Contract Particulars and /or RCR Invoice.

Site means the location where the Services are to be performed.

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

2. Validity Period

Our offer is open for acceptance for a period of thirty (30) days from the date of tender submission or such time as the parties agree in writing.

3. Deemed Acceptance

In the absence of written acknowledgement, the performance of any of the Works by RCR will be deemed acceptance of the Contract.

4. Price

Unless otherwise stated, the Contract Price quoted is net and exclusive of Goods and Services Tax (GST).

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. Access to Site

The Client must provide RCR with access to the Site necessary for RCR to undertake the Services and possession of a sufficient portion of the Site to enable RCR to properly perform the Works without interference. RCR will be entitled to claim an extension of time and any costs incurred as a result of any delay caused due to interference of the Client or others on Site and/or delay in getting access to the Site.

7. Services

RCR will undertake the Services in accordance with the Contract and using due skill, care and diligence.

The Client shall ensure that its employees, consultants, agents and contractors cooperate with RCR and do not interfere with or delay delivery of the Services. RCR will be entitled to claim an extension of time and any costs incurred as a result of any delay caused due to any interference by the Client or others to the delivery of the Services.



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RCR may bring onto Site RCR Plant and Equipment which is not sold to the Client, but is used by RCR in carrying out the Services. Title in the RCR Plant and Equipment remains at all times with RCR, and RCR may enter the Site at any time to retake possession of any RCR Plant and Equipment without liability for trespass or for any resulting damage.

8. Information and Documents

The Client will provide all Information including answers to any questions that RCR may ask, to enable RCR to carry out the Services. The Client shall be responsible for and confirms the completeness and accuracy of all Information provided to RCR. RCR will not check or review any Information provided by the Client, for the purpose of assessing completeness or accuracy, unless that is part of the Services described in Item 3 of the Contract Particulars. RCR will be entitled to claim an extension of time and any costs incurred as a result of any delay in provision of Information by the Client or others to RCR or due to the Information being incorrect.

9. Performance

Notwithstanding any other provision of this Contract and to the full extent permitted at law, no warranty shall apply to Services provided by RCR, as to fitness for purpose or operation performance of any equipment belonging to the Client. Where specification, suitability, performance, size, number, capacity, ancillary attachments, is recommended, quoted, specified, provided or selected by the Client, or required by the Client for RCR to carry out the Services, the Client is responsible for performance of all equipment at Site. RCR is not liable for any failure of the Client's equipment to perform to any standard specified or requested by the Client or estimated by RCR.

RCR shall not be liable for any claims for loss or damages arising from or in any way connected to the misapplication, abuse, improper use, construction, installation or abnormal conditions of operation of any of the Client's equipment or parts of equipment on Site.

10. 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.

11. 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.

12. Proportionate Liability

Subject to clauses 9, 10 and 11 above, RCR shall be proportionately liable to the extent that RCR caused or contributed to such claim, demand, proceeding, cost, expense, loss, liability or damage under the Contract.

13. 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 complete the Services 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 aggregate. The Client agrees such damages are a genuine and reasonable pre-estimate of loss for delay arising out of the Contract.

14. Defects Liability Period

14.1 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 for Associated Goods which RCR has supplied will be passed on to the Client on agreement with the manufacturer.

14.2 During the defects liability period, RCR will make good or replace (as the case may be) defective Services, excluding:

14.2.1 any interfacing between the Client's equipment, Site, plant or design (unless expressly included as part of Services and listed in Item 3);

14.2.2 ordinary wear and tear; and

14.2.3 any damage which has been caused or contributed by the Client's negligence or acts or omissions.

15. Personal Property Securities Act 1999

15.1 In this clause 15 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.

15.2 The Client acknowledges and grants RCR a security interest in the Goods (and any parts thereof) and any proceeds of those Goods:

15.2.1 as security for payment of that part and/or of each other part/s of the Goods;

15.2.2 for any other amounts owing by the Client to RCR from time to time; and

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

(‘Client's Indebtedness and Obligations’).

15.3 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:

15.3.1 in or to which the Client has rights; and

15.3.2 has not been supplied by RCR to the Client.

15.4 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.

15.5 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.

15.6 The Client agrees to do all things which RCR reasonably requires to:

15.6.1 ensure that RCR has a perfected security interest and a perfected purchase money security interest



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in each part of the Goods to the extent of the purchase price for that part; and

- 15.6.2 enable RCR to exercise any of its rights or powers under the Contract.

15.7 Nothing in the Contract shall be construed as:

- 15.7.1 an agreement to subordinate the security interest created under the Contract in favour of any person;
- 15.7.2 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
- 15.7.3 a consent by RCR to any property that is not Goods becoming an accession to any Goods.

16. 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.

17. Insurance

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

18. Confidentiality

The Client acknowledges and agrees that any information submitted by RCR in its offer which includes but is not limited to pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client. Such information must at all times remain confidential and shall not be disclosed to any third party without RCR's prior written consent.

If such information is disclosed to a third party with RCR's prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by confidentiality obligations.

19. Cancellation

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 for all Associated Goods and/or Services 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.

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 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. General

22.1 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. Where there is no jurisdiction stipulated in Item 11 the jurisdiction is New Zealand.

22.2 Any waiver partly or whole of the terms of the Contract will be valid only if in writing and signed by RCR.

22.3 Any provision of the Contract that is prohibited or unenforceable, such unenforceability shall not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision.

22.4 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 or signed by an authorised representative of RCR.



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23. 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 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:

<i>Parties</i>	1	RCR	<i>[Insert name of RCR entity]</i>
		RCR's Representative	Attention: Address: Phone: Fax: Mobile: Email:
	2	Client	<i>[insert name Client entity]</i>
		Client's Representative	Attention: Address: Phone: Fax: Mobile: Email:
<i>Services</i>	3	Services	
	3a	Associated Goods	
<i>Price and Payment</i>	4	Contract Price	<i>(total hours sum plus Associated Goods Fee plus any other costs)</i>
		Hourly Rate and total hours sum	<i>(hourly rate x number of hours = total hours sum)</i>
		Associated Goods Fee	<i>(cost of any Associated Goods sold to Client)</i>
		Time for Payment	
	5	Time for Acceptance by Client of RCR's Quotation	
	6	Defects Liability Period	[X] months from [insert]
	7	Completion Date	
	8	The Client Site	
	9	Additional Documents	<i>(For example: List all documents including:</i> <ul style="list-style-type: none"> • <i>schedules</i> • <i>specifications</i> • <i>annexures</i> • <i>drawings</i>)
	10	Insurances	<input type="checkbox"/> accident 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.
	11	Jurisdiction	New Zealand