

1. Definitions

- 1.1 “TC&D” means Ticehurst Construction & Design Limited, its successors and assigns or any person acting on behalf of and with the authority of Ticehurst Construction & Design Limited.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by TC&D 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).
- 1.4 “Price” means the Price payable for the Works as agreed between TC&D and the Client in accordance with clause 5 below.

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 provision of any Works.
- 2.2 These terms and conditions may only be amended with TC&D’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and TC&D.

3. Change in Control

- 3.1 The Client shall give TC&D 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 number/s, or business practice). The Client shall be liable for any loss incurred by TC&D as a result of the Client’s failure to comply with this clause.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2, the Client agrees that should the Client introduce any third party to TC&D as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Works, to request any variation thereto, on the Client’s behalf, and such authority to continue until all requested Works have been completed or the Client otherwise notifies TC&D in writing that said person is no longer the Client’s duly authorised representative.
- 4.2 In the event that the Client’s duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise TC&D in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to TC&D for all additional costs incurred by TC&D (including TC&D’s profit margin) in providing any Works, or variation/s thereto, requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Price and Payment

- 5.1 At TC&D’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by TC&D to the Client in respect of Works performed or Materials supplied; or
 - (b) TC&D’s quoted Price (subject to clause 5.2) which shall be binding upon TC&D provided that the Client shall accept TC&D’s quotation in writing within thirty (30) days.
- 5.2 TC&D 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 conditions, limitations to accessing the site, obscured/latent building/site defects, safety considerations (discovery of asbestos, structural damage, etc.), prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality, hard rock barriers below the surface or iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to TC&D in the cost of labour or Materials, which are beyond TC&D’s control.
- 5.3 At TC&D’s sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by TC&D, which may be:
 - (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TC&D.
- 5.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and TC&D.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to TC&D an amount equal to any GST TC&D must pay for any provision of Works by TC&D under this or any other agreement. 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.

6. Provision of the Works

- 6.1 Subject to clause 6.2, it is TC&D’s responsibility to ensure that the Works start as soon as it is reasonably possible.

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- 6.2 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that TC&D claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond TC&D's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify TC&D that the site is ready.

- 6.3 Any time specified by TC&D for provision of the Works is an estimate only and TC&D will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that TC&D is unable to provide the Works as agreed solely due to any action or inaction of the Client then TC&D shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.

7. Risk

- 7.1 Unless specified by TC&D in writing, TC&D shall not be obligated to maintain a contract works insurance policy for the Works, and the Client acknowledges that they shall be responsible to arrange insurance:
- (a) for the Works against loss or damage for not less than the total of the Price; and
 - (b) for full replacement value against loss or damage to the Client's existing structure made available to enable performance of the Works or adjacent to the Works and against loss or damage to the Client's contents; and
 - (c) against consequential loss arising from loss or damage to the Client's existing structures made available for the Works to be carried out.
- 7.2 TC&D may at its discretion notify the Client that it requires to store at the work site Materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply TC&D a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 7.3 Any advice, recommendation, information, assistance or service provided by TC&D in relation to Works provided is given in good faith, is based on TC&D's own knowledge and experience and shall be accepted without liability on the part of TC&D and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Works.

8. Dimensions, Plans and Specifications

- 8.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Works unless TC&D and the Client agree otherwise in writing.
- 8.2 TC&D shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client or the Client's representative.
- 8.3 If the giving of a quotation for the provision of the Works involves TC&D estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy thereof before the Client accepts such quotation. Should the Client require any changes to the estimated measurements and quantities, the Client shall request such changes in writing before acceptance of the quotation.

9. Access

- 9.1 The Client shall ensure that TC&D has clear and free access to the work site at all times to enable them to undertake the Works. TC&D shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of TC&D.

10. Underground Locations

- 10.1 Prior to TC&D commencing the Works the Client must advise TC&D of the precise location of all underground services on the site and clearly mark 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 site.
- 10.2 Whilst TC&D will take all care to avoid damage to any underground services the Client agrees to indemnify TC&D 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 10.1.

11. Compliance with Laws

- 11.1 The Client and TC&D 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 occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

12. Title

- 12.1 TC&D and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid TC&D all amounts owing to TC&D; and
 - (b) the Client has met all of its other obligations to TC&D.
- 12.2 Receipt by TC&D 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, and until then TC&D's rights or ownership in regards to the Materials, and this agreement, shall continue.

- 12.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to TC&D on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for TC&D and must pay to TC&D the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed. The production of these terms and conditions by TC&D shall be sufficient evidence of TC&D's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with TC&D to make further enquiries.
 - (c) 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 TC&D and must pay or deliver the proceeds to TC&D on demand.
 - (d) unless the Materials have become fixtures the Client irrevocably authorises TC&D to enter any premises where TC&D believes the Materials are kept and recover possession of the Materials.
 - (e) TC&D may commence proceedings to recover the Price notwithstanding that ownership of the Materials has not passed to the Client.

13. Personal Property Securities Act 1999 ("PPSA")

- 13.1 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 and/or collateral (account) – being a monetary obligation of the Client to TC&D for Works – previously provided (if any) and that will be provided in the future by TC&D to the Client.
- 13.2 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 TC&D may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, TC&D for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of TC&D.
- 13.3 TC&D and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by TC&D, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by TC&D under clauses 13.1 to 13.5.

14. Security and Charge

- 14.1 In consideration of TC&D agreeing to provide 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, 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).
- 14.2 The Client indemnifies TC&D from and against all TC&D's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TC&D's rights under this clause.
- 14.3 The Client irrevocably appoints TC&D and each director of TC&D as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Client's Disclaimer

- 15.1 The Client hereby disclaims any right to rescind, or cancel any contract with TC&D or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by TC&D and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

16. Defects, Errors and Omissions

- 16.1 The Client shall inspect the Works on completion and shall within thirty (30) days of such time (being of the essence) notify TC&D of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford TC&D an opportunity to inspect the Works within a reasonable time following such notification if the Client believes the Works are defective in any way. If the Client shall fail to comply with these provisions the Works shall be presumed to be free from any defect or damage. For defective Works, which TC&D has agreed in writing that the Client is entitled to reject, TC&D's liability is limited to either (at TC&D's discretion) rectifying or re-providing the Works.
- 16.2 Materials will not be accepted for return other than in accordance with 16.1 above.

17. Warranties

- 17.1 Subject to the conditions of warranty set out in clause 17.2, TC&D warrants that if any defect in any workmanship of TC&D becomes apparent and is reported to TC&D within three (3) months of the date of completion (time being of the essence) then TC&D will either (at TC&D's sole discretion) replace or remedy the workmanship.

- 17.2 The conditions applicable to the warranty given by clause 17.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain the Works; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by TC&D; or
 - (iii) any use of the Works otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of the Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and TC&D shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without TC&D's consent.
 - (c) in respect of all claims TC&D shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 17.3 For Materials not manufactured by TC&D, the warranty shall be the current warranty provided by the manufacturer of the Materials. TC&D shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
- 17.4 TC&D will use reasonable endeavours to match new Materials to existing Materials. However, the parties recognise that it may not be possible to provide an exact matching of Materials and in such event there shall be no claim against TC&D.
- 17.5 In the case of second hand Materials, the Client acknowledges that they have had full opportunity to inspect the same and that they accept the same with all faults and that no warranty is given by TC&D as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. TC&D shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

18. Intellectual Property

- 18.1 Where TC&D has designed, drawn, written plans or a schedule of Works, or created any Materials for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in TC&D, and shall only be used by the Client at TC&D's discretion.
- 18.2 The Client warrants that all designs, specifications or instructions given to TC&D will not cause TC&D to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TC&D against any action taken by a third party against TC&D in respect of any such infringement.
- 18.3 The Client agrees that TC&D may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials which TC&D has created for, or any digital media of the Works which TC&D has provided to, 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 TC&D'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 TC&D any money the Client shall indemnify TC&D from and against all costs and disbursements incurred by TC&D in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TC&D's collection agency costs, and bank dishonour fees).
- 19.3 Without prejudice to any other remedies TC&D may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions TC&D may suspend or terminate the provision of Works to the Client. TC&D will not be liable to the Client for any loss or damage the Client suffers because TC&D has exercised its rights under this clause.
- 19.4 Without prejudice to TC&D's other remedies at law TC&D shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TC&D shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TC&D becomes overdue, or in TC&D's opinion the Client will be unable to make a payment when it falls due;
 - (b) 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
 - (c) 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

- 20.1 TC&D may cancel any contract to which these terms and conditions apply or cancel provision of the Works at any time before the Works have commenced by giving written notice to the Client. On giving such notice TC&D shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to TC&D for Materials already provided. TC&D shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Client cancels the provision of the Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by TC&D as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Materials made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Act 1993

- 21.1 The Client authorises TC&D or TC&D's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including 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 TC&D from the Client directly or obtained by TC&D 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.
- 21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Client shall have the right to request TC&D for a copy of the information about the Client retained by TC&D and the right to request TC&D to correct any incorrect information about the Client held by TC&D.

22. Construction Contracts Act 2002

- 22.1 The Client hereby expressly acknowledges that:
- (a) TC&D has the right to suspend the Works 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 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 TC&D by a particular date; and
 - (iv) TC&D has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if TC&D suspends the Works, 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 TC&D exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to TC&D under the Contractual Remedies Act 1979; 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 TC&D suspending the Works under this provision.

23. Dispute Resolution

- 23.1 All disputes and differences between the Client and TC&D touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

24. General

- 24.1 The failure by TC&D to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect TC&D'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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Masterton Court of New Zealand.
- 24.3 TC&D 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 TC&D of these terms and conditions (alternatively TC&D's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 24.4 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 TC&D nor to withhold payment of any invoice because part of that invoice, or any other matter relating to the Works, is in dispute.
- 24.5 TC&D may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.6 The Client agrees that TC&D may amend these terms and conditions at any time. If TC&D makes a change to these terms and conditions, then that change will take effect from the date on which TC&D notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for TC&D to provide any Works to the Client.
- 24.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.