

**1. Definitions**

- 1.1 "Modern Transport Engineers " means Modern Transport Engineers Limited, its successors and assigns or any person acting on behalf of and with the authority of Modern Transport Engineers Limited.
- 1.2 "Client" means the person/s buying the Goods 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 "Goods" means all Goods or Services supplied by Modern Transport Engineers Limited to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between Modern Transport Engineers Limited 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 delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Modern Transport Engineers Limited's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Modern Transport Engineers Limited.
- 2.3 The Client acknowledges that Modern Transport Engineers Limited is only responsible for parts that are replaced by Modern Transport Engineers Limited and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify Modern Transport Engineers Limited against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising (including, but not limited to, loss of perishables, flooding and/or damage to clothing).
- 2.4 Where Modern Transport Engineers Limited gives advice, recommendations, information, assistance or service to the Client or the Client's agent, regarding the Goods or Services then it is given in good faith and Modern Transport Engineers Limited shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Client relying on the same.

**3. Change in Control**

- 3.1 The Client shall give Modern Transport Engineers Limited 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 Modern Transport Engineers Limited as a result of the Client's failure to comply with this clause.

**4. Authorised Representatives**

- 4.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Modern Transport Engineers Limited as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any materials or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies Modern Transport Engineers Limited 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 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Modern Transport Engineers Limited 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 Modern Transport Engineers Limited for all additional costs incurred by Modern Transport Engineers Limited (including Modern Transport Engineers Limited's profit margin) in providing any works, materials, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

**5. Price and Payment**

- 5.1 At Modern Transport Engineers Limited's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Modern Transport Engineers Limited to the Client; or
  - (b) Modern Transport Engineers Limited's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

- 5.2 Modern Transport Engineers Limited reserves the right to change the Price if a variation to Modern Transport Engineers Limited's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to Modern Transport Engineers Limited in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, limitations to accessing the site, safety considerations, availability of machinery, prerequisite work by any third party not being completed or obscured defects etc which are only discovered on commencement of the Services) will be charged for on the basis of Modern Transport Engineers Limited's quotation and will be shown as variations on the invoice.
- 5.3 At Modern Transport Engineers Limited's sole discretion a non-refundable deposit may be required up on request.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Modern Transport Engineers Limited, which may be:
- (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Modern Transport Engineers Limited's payment schedule;
  - (c) for certain Client's approved in writing, 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;
  - (d) the date specified on any invoice or other form as being the date for payment.
- 5.5 Payment may be made by cash, cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Modern Transport Engineers Limited.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Modern Transport Engineers Limited an amount equal to any GST Modern Transport Engineers Limited must pay for any supply by Modern Transport Engineers Limited under this or any other agreement for the sale of the Goods. 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. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Modern Transport Engineers Limited's address; or
  - (b) Modern Transport Engineers Limited (or Modern Transport Engineers Limited's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At Modern Transport Engineers Limited's sole discretion the cost of delivery is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Modern Transport Engineers Limited shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Any time or date given by Modern Transport Engineers Limited to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Modern Transport Engineers Limited will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Modern Transport Engineers Limited is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Modern Transport Engineers Limited is sufficient evidence of Modern Transport Engineers Limited's rights to receive the insurance proceeds without the need for any person dealing with Modern Transport Engineers Limited to make further enquiries.
- 7.3 If the Client requests Modern Transport Engineers Limited to leave Goods outside Modern Transport Engineers Limited's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

- 7.4 The Client agrees to operate the Goods safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Modern Transport Engineers Limited or posted on the Goods. The Client accepts that any Goods designed and/or built for a specific purpose are used outside of said purpose, causing any loss or damage to the Goods will incur the release of any of Modern Transport Engineers Limited's obligations to repair under any warranty expressed or supplied.

**8. Dimensions, Plans and Specifications**

- 8.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless Modern Transport Engineers Limited and the Client agree otherwise in writing.
- 8.2 Modern Transport Engineers Limited shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client
- 8.3 If the giving of an estimate or quotation for the supply of Goods involves Modern Transport Engineers Limited estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of Modern Transport Engineers Limited's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 8.4 Should the Client require any changes to Modern Transport Engineers Limited's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

**9. Title**

- 9.1 Modern Transport Engineers Limited and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Modern Transport Engineers Limited all amounts owing to Modern Transport Engineers Limited; and
  - (b) the Client has met all of its other obligations to Modern Transport Engineers Limited.
- 9.2 Receipt by Modern Transport Engineers Limited 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.
- 9.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to Modern Transport Engineers Limited on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Modern Transport Engineers Limited and must pay to Modern Transport Engineers Limited the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Modern Transport Engineers Limited and must pay or deliver the proceeds to Modern Transport Engineers Limited on demand.
  - (d) the Client should not convert or process the Goods 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 Modern Transport Engineers Limited and must sell, dispose of or return the resulting product to Modern Transport Engineers Limited as it so directs.
  - (e) the Client irrevocably authorises Modern Transport Engineers Limited to enter any premises where Modern Transport Engineers Limited believes the Goods are kept and recover possession of the Goods.
  - (f) Modern Transport Engineers Limited may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Modern Transport Engineers Limited.
  - (h) Modern Transport Engineers Limited may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**10. Personal Property Securities Act 1999 ("PPSA")**

- 10.1 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 Goods previously supplied by Modern Transport Engineers Limited to the Client (if any) and all Goods that will be supplied in the future by Modern Transport Engineers Limited to the Client.

10.2 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 Modern Transport Engineers Limited may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Modern Transport Engineers Limited for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Modern Transport Engineers Limited; and
- (d) immediately advise Modern Transport Engineers Limited of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

10.3 Modern Transport Engineers Limited and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

10.5 Unless otherwise agreed to in writing by Modern Transport Engineers Limited, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10.6 The Client shall unconditionally ratify any actions taken by Modern Transport Engineers Limited under clauses 10.1 to 10.5.

#### **11. Security and Charge**

11.1 In consideration of Modern Transport Engineers Limited agreeing to supply the Goods, 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).

11.2 The Client indemnifies Modern Transport Engineers Limited from and against all Modern Transport Engineers Limited's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Modern Transport Engineers Limited's rights under this clause.

11.3 The Client irrevocably appoints Modern Transport Engineers Limited and each director of Modern Transport Engineers Limited as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

#### **12. Client's Disclaimer**

12.1 The Client hereby disclaims any right to rescind, or cancel any contract with Modern Transport Engineers Limited or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Modern Transport Engineers Limited and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

#### **13. Defects**

13.1 The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify Modern Transport Engineers Limited of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Modern Transport Engineers Limited an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Modern Transport Engineers Limited has agreed in writing that the Client is entitled to reject, Modern Transport Engineers Limited's liability is limited to either (at Modern Transport Engineers Limited's discretion) replacing the Goods or repairing the Goods.

13.2 Goods will not be accepted for return other than in accordance with 13.1 above.

#### **14. Warranty For Goods Manufactured By Modern Transport Engineers Limited**

14.1 All new Goods supplied by Modern Transport Engineers Limited are covered by Warranty on terms and conditions described in the Owners Manual supplied with the Goods.

#### **15. Warranty For Goods Not Manufactured By Modern Transport Engineers Limited**

15.1 For Goods not manufactured by Modern Transport Engineers Limited, the warranty shall be the current warranty provided

by the manufacturer of the Goods. Modern Transport Engineers Limited 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 Goods.

**16. Consumer Guarantees Act 1993**

16.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Modern Transport Engineers Limited to the Client.

**17. Intellectual Property**

17.1 Where Modern Transport Engineers Limited has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Modern Transport Engineers Limited.

17.2 The Client warrants that all designs, specifications or instructions given to Modern Transport Engineers Limited will not cause Modern Transport Engineers Limited to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Modern Transport Engineers Limited against any action taken by a third party against Modern Transport Engineers Limited in respect of any such infringement.

17.3 The Client agrees that Modern Transport Engineers Limited may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Modern Transport Engineers Limited has created for the Client.

**18. Default and Consequences of Default**

18.1 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 Modern Transport Engineers Limited's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

18.2 If the Client owes Modern Transport Engineers Limited any money the Client shall indemnify Modern Transport Engineers Limited from and against all costs and disbursements incurred by Modern Transport Engineers Limited in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Modern Transport Engineers Limited's collection agency costs, and bank dishonour fees).

18.3 Without prejudice to any other remedies Modern Transport Engineers Limited may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Modern Transport Engineers Limited may suspend or terminate the supply of Goods to the Client. Modern Transport Engineers Limited will not be liable to the Client for any loss or damage the Client suffers because Modern Transport Engineers Limited has exercised its rights under this clause.

18.4 Without prejudice to Modern Transport Engineers Limited's other remedies at law Modern Transport Engineers Limited shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Modern Transport Engineers Limited shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Modern Transport Engineers Limited becomes overdue, or in Modern Transport Engineers Limited's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, 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.

**19. Dispute Resolution**

19.1 All disputes and differences between the Client and Modern Transport Engineers Limited 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.

**20. Compliance with Laws**

20.1 The Client and Modern Transport Engineers Limited shall comply with the provisions of all statutes, regulations and by-laws of government, local and other public authorities that may be applicable to the Services.

20.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

20.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

**21. Cancellation**

- 21.1 Modern Transport Engineers Limited may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Modern Transport Engineers Limited shall repay to the Client any money paid by the Client for the Goods. Modern Transport Engineers Limited shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Modern Transport Engineers Limited as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.3 Cancellation of orders for Goods 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.

**22. Privacy Act 1993**

- 22.1 The Client authorises Modern Transport Engineers Limited or Modern Transport Engineers Limited'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 Modern Transport Engineers Limited from the Client directly or obtained by Modern Transport Engineers Limited 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.
- 22.2 Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 The Client shall have the right to request Modern Transport Engineers Limited for a copy of the information about the Client retained by Modern Transport Engineers Limited and the right to request Modern Transport Engineers Limited to correct any incorrect information about the Client held by Modern Transport Engineers Limited.

**23. Unpaid Modern Transport Engineers Limited's Rights**

- 23.1 Where the Client has left any item with Modern Transport Engineers Limited for repair, modification, exchange or for Modern Transport Engineers Limited to perform any other service in relation to the item and Modern Transport Engineers Limited has not received or been tendered the whole of any moneys owing to it by the Client, Modern Transport Engineers Limited shall have, until all moneys owing to Modern Transport Engineers Limited are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 23.2 The lien of Modern Transport Engineers Limited shall continue despite the commencement of proceedings, or judgment for any moneys owing to Modern Transport Engineers Limited having been obtained against the Client.

**24. General**

- 24.1 The failure by Modern Transport Engineers Limited to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Modern Transport Engineers Limited'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 courts of Rotorua.
- 24.3 Modern Transport Engineers Limited 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 Modern Transport Engineers Limited of these terms and conditions (alternatively Modern Transport Engineers Limited's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 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 Modern Transport Engineers Limited nor to withhold payment of any invoice because part of that invoice is in

dispute.

- 24.5 Modern Transport Engineers Limited 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 Modern Transport Engineers Limited may amend these terms and conditions at any time. If Modern Transport Engineers Limited makes a change to these terms and conditions, then that change will take effect from the date on which Modern Transport Engineers Limited notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Modern Transport Engineers Limited to provide Goods 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.