

**1. Definitions**

- 1.1 "Consultant" shall mean Transport Specifications Ltd, its successors and assigns or any person acting on behalf of and with the authority of Transport Specifications Ltd.
- 1.2 "Client" means the person/s requesting the Consultant to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Goods" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Consultant in the course of it conducting, or supplying to the Client, any Services. Any description of the Goods that has been given by the Consultant to the Client is for identification purposes only and the use of that descriptions by the Client does not mean that this agreement is a sale by description.
- 1.4 "Services" means all Services supplied by the Consultant to the Client at the Client's request from time to time.
- 1.5 "Price" means the Price payable for the Services as agreed between the Consultant and the Client in accordance with clause 5 of this contract.
- 1.6 "Confidential Information" means any information of, or relating to the Client, or any of the trade secrets, know-how, business, technical, strategic, commercial, contractual or other information, methods, pricing structure, business transactions, financial affairs or other information relating to the Client or of any Client associated with it (including by way of joint venture) which the Consultant in its capacity as Consultant has received, obtained, become aware of or possessed and which is not lawfully in the public domain or available to, and legally and properly obtained by the Consultant from a source other than the Client or independently acquired or developed by the Consultant without violating any of the Consultant's obligations under this Agreement or any law and without the use of any Confidential Information.

**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 Services provided by the Consultant.
- 2.2 These terms and conditions may only be amended with the Consultant's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Consultant.
- 2.3 This agreement constitutes the entire understanding of the parties in regards to the provision of Services and supersedes all prior agreements and understanding, whether written or oral, between the parties. No provision of this agreement shall be construed to express or imply a joint venture, partnership or a relationship other than customer and supplier of goods and services. No employee, agent or other representative of either party shall at any time be deemed to be under the control or authority of the other party, or under the joint control of both parties.

**3. Electronic Transactions Act 2002**

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**4. Change in Control**

- 4.1 The Client shall give the Consultant 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 the Consultant as a result of the Client's failure to comply with this clause.

**5. Price and Payment**

- 5.1 At the Consultant's sole discretion the Price shall be either;
  - (a) as indicated on any invoice provided by the Consultant to the Client; or
  - (b) the Consultant's quoted Price (subject to clauses 5.2 and 5.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Consultant reserves the right to change the Price if a variation to the Consultant's quotation is requested, including in the event of increases to the Consultant in the cost of labour or materials which are beyond the Consultant's control.
- 5.3 In addition to the payment of the Price, the Client shall reimburse the Consultant for all reasonable expenses incurred by the Consultant in the performance of the Services. Such expenses include, but shall not be limited to, costs for travel and attendance to meetings, mobile and long distance telephone calls, fax, printing, photocopy and freight costs. The Client shall be entitled to request and receive such evidence as it may reasonably require of the type and amount of such expenses.
- 5.4 At the Consultant's sole discretion, a deposit may be required.
- 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Consultant, which may be:
  - (a) by way of instalments/progress payments in accordance with the Consultant's payment schedule;
  - (b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Consultant.
- 5.6 Payment will be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Consultant.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for any supply by the Consultant under this or any other agreement for providing the Consultant's Services. 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. Provisions of the Services**

- 6.1 The Consultant will provide the Services in a competent and professional manner as and when requested by the Client.
- 6.2 When providing the Services, the Consultant shall comply with any workplace and security guidelines, and any other instructions specified by the Client whilst on the Client's premises.
- 6.3 The Consultant may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

- 6.4 Any time specified by the Consultant for delivery of the Services is an estimate only and the Consultant will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Consultant is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Consultant shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 7. Risk**
- 7.1 Irrespective of whether the Consultant retains ownership of any Goods all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Consultant may repossess the Goods. The Client must insure all Goods on or before delivery.
- 7.2 The Consultant reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Goods as a result of the Client's failure to insure in accordance with clause 6.1.
- 8. Title**
- 8.1 The Consultant and the Client agree that where it is intended that the ownership of Goods is to pass to the Client that such ownership shall not pass until:
- the Client has paid the Consultant all amounts owing for the Services; and
  - the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
- 8.2 Receipt by the Consultant 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 the Consultant's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- the Client is only a bailee of the Goods and must return the Goods to the Consultant immediately upon request by the Consultant;
  - the Client holds the benefit of the Client's insurance of the Goods on trust for the Consultant and must pay to the Consultant the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of sale of the Goods on trust for the Consultant and must pay or deliver the proceeds to the Consultant on demand.
  - 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 the Consultant and must dispose of or return the resulting product to the Consultant as the Consultant so directs.
  - 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 the Consultant;
  - the Client irrevocably authorises the Consultant to enter any premises where the Consultant believes the Goods are kept and recover possession of the Goods.
- 9. Personal Property Securities Act 1999 ("PPSA")**
- 9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - a security interest is taken in all Goods and all collateral (accounts) – being a monetary obligation of the Client for Services – previously supplied by the Consultant to the Client and that will be supplied in the future by the Consultant to the Client.
- 9.2 The Client undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made charged thereby;
  - not register a financing change statement or a change demand without the prior written consent of the Consultant.
- 9.3 The Consultant and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Consultant, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by the Consultant under clauses 9.1 to 9.5.
- 10. Security and Charge**
- 10.1 In consideration of the Consultant agreeing to provide the Services, 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).
- 10.2 The Client indemnifies the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Consultant's rights under this clause.
- 10.3 The Client irrevocably appoints the Consultant and each director of the Consultant as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.
- 11. Client's Disclaimer**
- 11.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Consultant or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Consultant and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.
- 12. Error and Omissions**
- 12.1 The Client shall inspect the Services on completion and shall within seven (7) days of such time notify the Consultant of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Consultant an opportunity to inspect the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

- 12.2 For defective Services, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 12.1.
- 13. Confidentiality and Conflicts of Interest**
- 13.1 The Consultant and its employees, directors, agents and contractors will:
- keep all Confidential Information and all data information and reports derived from it secret and confidential, except to the extent that the Consultant is required by any law, Court, government authority, or stock exchange to divulge it;
  - keep as Confidential Information the identity of any sources of any such information;
  - take all reasonable precautions to maintain the secrecy and prevent the disclosure of any Confidential Information;
  - not disclose any Confidential Information to any third party without first obtaining the written consent of the Client except to the extent necessary for the Consultant's performance of its obligations under this Agreement and always with prior consultation with the Client;
  - not use the Confidential Information for any purpose other than providing the Services; and
  - where requested by the Client shall return the Confidential Information (including all copies and reproductions) and destroy all electronic records of the Confidential Information at the conclusion of this Agreement (or if sooner requested).
- 13.2 The Consultant's obligations under this clause 10 shall survive the termination of this agreement until such time as the Confidential Information is in the public domain other than by act or omission of the Consultant.
- 13.3 The Consultant shall not, and shall ensure that its employees, directors, agents and contractors do not, directly or indirectly, acquire, serve or promote any interest in conflict with the interest of the Client in relation to any matter to which the Services may relate without first notifying the Client of such conflict in which case the Client will have the option to immediately terminate this Agreement.
- 14. Reporting**
- 14.1 In providing the Services, the Consultant shall follow the instructions of, and report in the first instance to, the project director or such persona as the Client's management may designate as being the appropriate instructor and recipient of the Services for any particular project.
- 14.2 The Consultant shall comply with the lawful instructions of the Client at all times and shall act in relation to the provision of the Services at all times in the best interests of the Client.
- 14.3 As part of the Price the Consultant will deliver to the Client one original of any report generated by the Consultant along with a diskette or electronic copy containing the report in Microsoft Office suite.
- 15. Consumer Guarantees Act 1993**
- 15.1 If the Client is acquiring Services 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 provision of Services by the Consultant to the Client.
- 16. Intellectual Property**
- 16.1 Unless expressly agreed to otherwise in writing between the parties:
- copyright and other intellectual property rights in all documentation, Goods and other things capable of ownership commissioned and paid for by the Client as part of the Services shall vest in the Client provided however that the Client grants a non-exclusive, royalty free licence to the Consultant for the future use of any such intellectual property rights developed by the Consultant;
  - the Consultant shall only grant a non-exclusive, royalty free licence to the Client to use all other things provided as part of the Services in which the Consultant holds the intellectual property rights for the exclusive purposes of the specific project to which the provision of the Services apply.
- 16.2 The Client warrants that all designs, specifications or instructions given to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.
- 16.3 The Client agrees that the Consultant may (at no cost) use for the purposes of marketing or entry into any competition, any Goods which the Consultant has created for the Client.
- 17. Default and Consequences of Default**
- 17.1 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 the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes the Consultant any money the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the provision of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.
- 17.4 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:
- any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to make a payment when it falls due;
  - 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 18. Cancellation**
- 18.1 The Consultant may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services are completed by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any sums paid in respect of the Price, less any amounts owing for Service already provided. The Consultant shall not be liable for any loss or damage whatever arising from such cancellation.



- 18.2 In the event that the Client cancels the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Consultant as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19. Privacy Act 1993**
- 19.1 The Client authorises the Consultant or the Consultant'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 the Consultant from the Client directly or obtained by the Consultant 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.
- 19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client shall have the right to request the Consultant for a copy of the information about the Client retained by the Consultant and the right to request the Consultant to correct any incorrect information about the Client held by the Consultant.
- 20. Liabilities**
- 20.1 The Consultant agrees to comply with all statutes, regulations and government decrees applicable to the provision of Services pursuant to this agreement. The Consultant is responsible for the payment of any fine for failure to comply with any statute, regulation or government decree.
- 20.2 The Consultant warrants that any estimates, opinions, conclusions or recommendations shall be reasonably held or made as at the time provided. The Client accepts and acknowledges however, that neither the Consultant nor its advisors, agents, officers or employees make any representation or warranty as to the accuracy or reliability of any estimates, opinions, conclusions, recommendations (which may change without notice) or other information provided as part of the Services and, to the maximum extent permitted by law, the Consultant disclaims all liability and responsibility for any direct or indirect loss or damage which may be suffered by any recipient through relying on or use of any estimates, opinions, conclusions, recommendations or other information provided by the Consultant as part of the Services. The parties further agree that, except for as otherwise specifically provided for in this Agreement, the Consultant will not be liable in contract, tort (including negligence) or otherwise to compensate the Client for any loss, injury or damage, whether consequential or otherwise, arising from this Agreement or the provision of the Services and the Client shall indemnify the Consultant against such legal action instituted against the Consultant by any third party in respect of any decision made by the Client in reliance upon the estimates, opinions, conclusions or recommendations provided in good faith by the Consultant.
- 20.3 The Consultant takes no responsibility for, nor do they warrant, the work of any third-party.
- 21. Arbitration**
- 21.1 Any dispute, doubt or question arising between the parties hereto touching the construction, meaning or terms contained or implied in this agreement, or the rights or liabilities of the parties hereto, shall be referred to the arbitration of a single arbitrator in the case where the parties can agree upon one and failing agreement to the arbitration of two arbitrators, one to be appointed by the Client and one to be appointed by the Consultant or in the case of the disagreement of such two arbitrators to their umpire to be appointed by the arbitrators before entering upon the reference and in either case in accordance in all respects with the provisions contained in the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.
- 22. General**
- 22.1 The failure by the Consultant to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Consultant'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.
- 22.2 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 Albany Court of Auckland, New Zealand.
- 22.3 All notices and other communications required or permitted under this agreement shall be in writing and shall be delivered personally, sent by registered post or sent by facsimile transmission. All such notice shall be deemed given when so delivered personally, or sent by facsimile transmission to the parties or the next day after sending by registered post at the following addresses (or at such other address for a party as shall be specified by like notice).
- 22.4 The Consultant 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 the Consultant of these terms and conditions (alternatively the Consultant's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 22.5 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 the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.6 The Consultant may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.7 The Client agrees that the Consultant may amend these terms and conditions at any time. If the Consultant makes a change to these terms and conditions, then that change will take effect from the date on which the Consultant notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Consultant to provide Services to the Client.
- 22.8 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.
- 22.9 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.