



NEW ZEALAND BUILDING SUBCONTRACTORS' FEDERATION INC.

TERMS AND CONDITIONS OF CONTRACT FOR CONSTRUCTION WORK

The following terms and conditions, in conjunction with our quotation (or offer or tender), hereinafter referred to as 'quotation', the drawings or specifications listed in that quotation constitute the entire contract between us, as supplier of goods and services, and you, our customer, for carrying out construction work as defined in the Construction Contracts Act 2002 (the CCA). These terms and conditions will not be superseded or amended by any invitation to tender, conditions of purchase, subcontract or head contract conditions, or otherwise unless stated in our quotation or expressly agreed by us in writing.

1. Offer and Acceptance Unless withdrawn in writing our quotation is available for acceptance for 30 days (or any longer period stated in the quotation) from the date of quotation, and thereafter is subject to confirmation. Your acceptance should be confirmed in writing prior to commencement of work, but in the absence of written acceptance our commencement of work will be taken as your acceptance by conduct.

Our quotation is based on costs and charges at the date of quotation. Unless the quotation states that it is a fixed price any changes in costs arising from sources beyond our control, including without limitation fluctuations in labour costs, prices of materials and services, or government charges, regulations or exchange rate fluctuations, shall be a variation.

By acceptance of our quotation you represent that you will have sufficient funds to pay for the work as it is performed, and undertake to provide reasonable proof of capability to make such payment if so requested by us. You authorise us to use information collected from you and to collect information that we may reasonably require from third parties for credit references or otherwise relating to the performance of this contract, and we reserve the right to decline acceptance if credit checks are unsatisfactory.

An order or letter of acceptance that contains terms or conditions in conflict with our quotation or these terms and conditions will not establish a binding contract except at our sole discretion.

2. Notices Correspondence and notices may be served by post, facsimile or email.

3. Documents We are entitled to rely on the accuracy of documents provided by you and shall not be obliged to check the accuracy or completeness of any plans, specifications, schedules of quantities or other information so provided. Any discrepancy between documents so provided and the actual requirements, or conflict within such documents, shall be a variation.

You will ensure that the specified or requested scope of our work is fit for the purpose of the building and integrated with other trades, and you will supply all information reasonably necessary for us to properly coordinate our work. Any changes required to the work quoted, or to the work reasonably foreseeable by us at the date of quotation, shall be a variation.

4. Design and Performance Unless expressly agreed otherwise we will not perform any design, design checks, engineering calculations or engineer's inspections, certifications or tests that may be required under the Building Act or otherwise.

Where we are required to design part or all of the work our design will be based on information provided to us, which shall include the construction sequence and temporary works, and special requirements related to building use, occupancy or performance.

Materials, equipment or systems nominated or specified by manufacturer, brand or model will be supplied and installed in accordance with the manufacturer's published literature or performance standards and will comply with the specified manufacturers' product literature. The supply of nominated or specified materials, equipment or systems does not imply a warranty as to suitability. We may at our option supply equivalent alternative brands or models.

5. Time for completion We will endeavour to meet the reasonable target completion date made known to us or agreed by us, and in the absence of any agreed target date will complete our work within a reasonable time. Unless expressly agreed we will not be liable for liquidated or other damages for completion delays. The time for completion shall be extended for any event directly or indirectly causing delay including but not limited to: access, weather conditions, labour disputes, strikes, accidents, fire, changed work sequence, lack of information or approvals, or for any suspension of work.

Should it be necessary, due to circumstances beyond our reasonable control, to engage other resources or to work outside ordinary working hours (7.30am to 5pm on "working days" as defined in the CCA) to endeavour to meet your completion target, any extra cost so incurred will be a variation.

6. Claims and Payment Where work is undertaken over a period exceeding one month, payment claims/invoices may be issued for progress payment covering work done and costs incurred including variations up to the end of each month.

Payment of the claimed amount plus Goods and Services Tax and without any retention, is due and payable by the 20th day of the following month. If you disagree for any reason with the claimed amount, you will respond to us in writing with a payment schedule before payment is due, detailing a scheduled amount (the amount that you propose to pay) and your reasons and basis of calculation for any item in the payment claim that you do not propose to pay in full. You will pay the scheduled amount by the due date. If we disagree with your payment schedule we may refer the matter to adjudication (refer Disputes and Differences). Contra charges will not be accepted unless notified in advance and mutually agreed.

You will pay interest on overdue payments at an annual rate of 12% simple calculated daily from the due date, plus any expenses that may be incurred by us in recovering our debt including full solicitor/client legal costs.

If payment is not made by the due date we reserve the right to give 5 working days notice of our intention to suspend work. Work shall resume when the overdue payment has been made in full, and all costs and losses incurred in suspending and resuming work shall be a variation. We reserve the right to terminate the contract if such suspension continues for more than 10 working days, and you will be liable for all costs and losses including loss of profit arising out of such termination.

7. Ownership Any goods and materials supplied by us shall remain our property until paid for in full. If any money remains unpaid or you are in breach of any obligation to us, we or our agents are authorised by you to enter your premises to recover and

resell any or all of those goods and materials. You agree that we may register a Financing Statement under the Personal Property Securities Act 1999 to give us a Perfected Security in any goods supplied.

8. Variations Variations include, without limitation, any change to the scope, quality or timing of the work, any circumstance that changes the cost of performing our work from that reasonably foreseeable at the time of quotation, or any other circumstance which is stated in these terms and conditions to be a variation, whether arising out of any oral or written instruction from you or your representative or otherwise. We will advise you as soon as practicable of any change to our contract price arising out of any variation. We may at our sole discretion on written notice withhold performance of any work that we reasonably consider to be a variation until we have received your written instruction, or where we have submitted a price for a variation your agreement to that submitted price.

Variations will generally be valued on the same basis or rates as corresponding original work. Where work does not directly correspond to the quotation, or cannot be performed in the most economic manner, variations may at our sole discretion be priced on the basis of time and materials (charge-up) at our normal rates and margins current at the time of performing the work.

9. Installation You will give us unimpeded access to the site to carry out our work in an efficient and safe manner, and unless otherwise agreed in writing you will provide without limitation the following (where relevant):

- proper facilities for carrying out the work including use of goods or passenger lifts, cranes, hoists and builder's scaffolding, scaffolding for any work to be carried out at a height of 3.5 metres or greater, rubbish removal facilities, temporary power and water supply, storage space, ablutions and safety lighting to allow the work to be installed safely and efficiently;
- all builders' work including penetrations and structural supports or any alteration as may be required to any part of the building to allow work to proceed;
- any required consent or other authority necessary for the work, including approvals from owners, occupiers and others.

We are entitled to rely on the accuracy of any drawings, dimensions, details and information supplied to us and will not be responsible for checking the accuracy of work carried out by others.

Where you have agreed to provide materials or to engage other contractors or consultants to perform work you will ensure that the relevant materials or services are provided at the time agreed or stated in our quotation, or if no time has been agreed, within a reasonable time so as not to impede the reasonable progress of our work.

We will provide reasonable protection for our work and equipment while the work is being installed but we do not accept responsibility for any damage caused to our work or equipment by anyone not engaged by us or otherwise under our direct control. The repair of any damage to our work and equipment shall be a variation.

10. Completion and Handover Where relevant you will ensure that the work of other relevant trades is completed so as to allow our finishing or commissioning work to proceed. We will provide advance notice of our requirements.

When our work, or a section of our work, has been completed we may request that you accept that work, and unless notified otherwise within 5 working days of such written request the work shall be deemed complete and you will be responsible for its ongoing protection. Acceptance of work shall not be unreasonably withheld, and work will be deemed complete when handed over for use by you.

11. Drawings, As-Built Drawings and Manuals Unless otherwise agreed detailed drawings and maintenance manuals will not be provided. Where we have agreed to provide detailed working drawings, they will be based on the fully detailed and dimensioned drawings provided by you. Unless otherwise agreed 'as-built' drawings will comprise the drawings to which the work was installed, marked up to show any variations to the completed installation.

12. Health and Safety We will perform the work in accordance with all relevant health and safety requirements and with any site-specific safety requirements notified to us. You will inform us of any hazards in the workplace to which we may be exposed in working on your premises, and we will provide a site-specific safety plan if so requested in writing. We may refuse to perform work if we are not satisfied that it can be performed safely.

13. Insurance We undertake to maintain insurances for public liability and vehicles for the duration of our work on site, and will provide evidence of cover if requested. Unless otherwise agreed in writing, you will insure for contractor's risk and other risks including consequential losses, fire, earthquake, theft or other damage, and will pay any excess under those policies.

Where work is being performed on an existing building, you will notify your insurer and amend any policies that may be in force. Where you do not own the building, you will ensure that the owner is so notified and amends insurances as necessary.

14. Warranty You will notify us promptly of any defects discovered in our workmanship or materials. We will remedy any defective workmanship and at our sole discretion repair or replace any faulty material reported to us in writing within 90 days of completion of the work or any defined stage of the work, or within any longer period agreed or stated in our quotation. We shall not be liable for any consequential costs whatsoever arising directly or indirectly out of any defect or failure. This warranty is in addition to any rights you may have as a consumer under the Consumer Guarantees Act 1993.

15. Maintenance Unless otherwise stated in the quotation no allowance has been made for any maintenance work.

16. Disputes and Differences If any dispute or difference arises in connection with work done or payments claimed, or any other matter relating to this contract, both parties will endeavour to resolve the matter by amicable negotiation. Either party may at any time refer any dispute to adjudication in terms of Part 3 of the CCA, and may refer any matter that is not finally resolved by adjudication to arbitration under the Arbitration Act 1996.