

TERMS AND CONDITIONS – Survey NZ 2018 Ltd – (the Company)

General

1. The Company will only deal on these terms and conditions as listed, unless otherwise accepted by the Company in writing. An order for purchase of professional services or goods from the Company made by the client will be taken to be an offer to the Company incorporating these terms. The Client / Customer and the Company agree that the Services and goods are acquired for the purpose of a business and that the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the goods and services.
2. The client has a right to complain to the Company if dissatisfied with any matter related to the certification. The Company has complaint management procedures outlined in the Quality Management Systems Manual. A Customer Complaints Form is available on request.
3. Disputes shall first be referred to conciliation for settlement. Unresolved disputes shall be referred to arbitration in accordance with the Arbitration Act 1996.
4. These Conditions will be governed by and construed pursuant to the laws of New Zealand and the parties agrees to submit to the jurisdiction of the courts of New Zealand in connection with any dispute relating to these Conditions, and all amounts are payable in New Zealand dollars.
5. If a dispute arises out of or relates to these Conditions (including any dispute as to breach or termination of the Conditions or as to any claim in tort, in equity or pursuant to any statute) a party to the Conditions may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.
 - A party to these Conditions claiming that a dispute ("the Dispute") has arisen under or in relation to these Conditions must give written notice to the other party to these Conditions specifying the nature of the Dispute.
 - On receipt of that notice by that other party, the parties to these Conditions ("the parties") must endeavour to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them
6. If the parties do not agree within 7 days of receipt of the notice (or such further period as agreed in writing by them) as to:
 - i. The dispute resolution technique and procedures to be adopted;
 - ii. The timetable for all steps in those procedures; and
 - iii. The selection and compensation of the independent person required for such technique, the parties must mediate the Dispute in accordance with the Mediation Rules of the New Zealand Law Society and the President of the New Zealand Law Society or the President's nominee will select the mediator and determine the mediator's remuneration.
7. If any clause or part of a clause of these Conditions is invalid, illegal, unlawful or otherwise being incapable of enforcement, that clause or part of a clause will firstly be read down to give it efficacy and, if that is not possible then, secondly will be deemed to be severed from these Conditions and be of no force and effect but all other clauses and parts of clauses of these Conditions will nevertheless prevail and remain in full force and effect and be valid and fully enforceable.
8. Specifications are nominal, specifications, Terms & Conditions may be subject to change without notice.
9. All prices are subject to change without notice and unless otherwise advised will be those ruling at the date of purchase/order.

Services

10. In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional. The Consultant shall not however be responsible for work affected by the requirements of other trades unless such requirements are specifically shown on any design drawings. While all care is taken to minimise errors in drawings provided by the Consultant from structural, architectural, fabrication and detailed drawings, the Consultant will not be held liable for these errors or any delays attributable to such. The Consultant will provide remedial / amended drawings as a result of any errors made by the Consultant at no charge, errors by others may incur extra costs.
11. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may pertain to the Services.
The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. The Consultant does however have an obligation to divulge information to the MBIE if, during the course of an inspection, it was observed that equipment was being operated in an unsafe manner. If this occurs the Client will be advised in advance that the information would be released. The Consultant may also, for time to time, need to obtain information from sources other than the Client in relation to the Consultants inspection activities. This information will remain confidential unless permission was obtained from the Client to release said information. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
12. The Client shall pay the Consultant for the Services the amount of fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an Agent (or a person purporting to act as Agent) on behalf of the Client, the Agent and Client shall be jointly and severally liable for payment of all accounts due to the Consultant under this Agreement.
13. All amounts payable by an account holder Client shall be paid within twenty (20) working days of the relevant invoice being mailed to the Client. Late payment shall constitute default and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of the payment at the rate specified on the invoice. Overdue invoices will be liable for late payment fees and collection costs. Non account and Overseas Clients must pay by cash or cheque prior to the release of documents.
14. Where services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records, which clearly identify time and expenses incurred.
15. The liability of the Consultant to the Client in respect of his or her Services for the project shall be limited to the greater of five times the value of the fees (exclusive of GST and disbursements) or the sum of \$100,000. The Consultant acknowledges that the Consultant currently holds a policy of Professional Indemnity Insurance for the greater amount of NZ\$100,000 or five times the value of the fees (exclusive of GST and disbursements). The Consultant undertakes to take all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the services.
16. Neither the Client nor the Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on him or her within six years from completion of the Services.
17. The Consultant shall only be liable to the Client, either in contract or in tort, for direct loss or damage suffered by the Client as the result of a breach by the Consultant of his or her obligations under this Agreement.
18. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services.
19. The Consultant shall retain copyright of all intellectual property prepared by the Consultant. The Client shall be entitled to use them or copy them only for the Works and the purpose for which they are intended. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Client may reproduce drawings, specifications and other documents in which the Consultant has copyright, as reasonably required in connection with the project but not otherwise. The Client shall have no right to use any of these documents where any or all of the fees and expenses payable to the Consultant have not been paid in accordance with this Agreement.
20. The Consultant and the Client will be aware of, and comply with, any relevant obligations imposed on them under the Health and Safety at Work Act 2015 (the "Act"). The Consultant has not and will not assume any duty imposed on the Client from time to time pursuant to the Act arising out of this engagement.
21. The Client may suspend all or part of the Services or terminate the Agreement by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.
22. Progress claim invoices may be sent where jobs extend past the 20th of the month.
23. Overseas clients will pay a deposit 50% of quote or NZ\$6,000 whichever is the greater, to be paid by Bank Draft prior to work starting. The remainder must be paid prior to the release of any documentation.
24. The Company shall not be held responsible for any equipment failure that would deem a warrantee of the equipment to be void. Sole liability for any alteration shall be with the client engaging the Company.

25. The Client will

- a. Procure all necessary access for the Company's representatives to enable the required services to be performed effectively;
 - b. Supply, if required, any special equipment and personnel necessary for the performance of the services;
 - c. Ensure that all necessary measures are taken for safety and security or working conditions, sites and installations during the performance of services and will not rely, in this respect, on the Company's advice whether required or not;
 - d. Take all necessary steps to eliminate or remedy any obstruction to, or interruptions in, the performance of the services;
 - e. Inform the Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;
 - f. Fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party, whether or not a report or certificate has been issued by the Company, failing which the Company shall be under no obligation to the Client.
26. The Company may delegate the performance of the whole or any part of the services contracted for with the Client to any agent or subcontractor
27. If the requirements of the Client necessitate the analysis of samples by the Client's or by any third party's laboratory the Company will pass on the result of the analysis but without responsibility for its accuracy. Likewise where the Company is only able to witness an analysis by the Client's or by any third party's laboratory the company will provide confirmation that the correct sample has been analysed but will not otherwise be responsible for the accuracy of any analysis or results.
28. The Company requires that the client provide an equipment controller to operate the equipment during inspection e.g. for cranes and EWPs. If an equipment controller is not provided and the client agrees that the Company's inspector can operate the equipment during inspection, then NO liability for damage, if any were to occur, shall be passed on to the Company.
29. The Company undertakes to exercise due care and skill in the performance of the services and accepts responsibility only in cases of proven negligence. The liability of the Company in respect of any claim for loss, damage or expense of whatsoever nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to 10 times the amount of the fee payable in respect of the specific service required which gives rise to such claim, provided, however, that the Company shall have no liability for any indirect, special or consequential loss (including loss of profits).
30. The Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one year after the date of the performance by the Company of the specific service which gives rise to the claim or in the event of any alleged non-performance within one year of the date when such service should have been completed.
31. The Client acknowledges that the Company does not, either by entering into a contract or by performing services, assume, abridge, abrogate or undertake to discharge any duty of the Client to any other person.
32. The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. Clients seeking a guarantee against loss or damage should obtain appropriate insurance.
33. The Client shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents or subcontractors against all claims made by any third party for loss, damage or expense of whatsoever nature including reasonable legal expenses and howsoever arising relating to the performance, purported performance or non-performance of any service to the extent that the aggregate of any such claims relating to any one service exceed the limit.
34. If the Company is prevented by reason of any cause whatsoever outside the Company's control from performing or completing any services for which an order has been given or an agreement made, the Client shall pay to the Company
- a. The amount of all abortive expenditure actually made or incurred;
 - b. A proportion of the agreed fee equal to the proportion (if any) of the services actually carried out;
And the Company shall be relieved of all responsibility whatsoever for the partial or total non-performance of the required services.
35. Overseas Clients will be responsible for any bond and equipment clearance through customs if required.
36. Excess baggage will be charged at cost plus 20%.

Heavy Motor Vehicle Certification – additional clauses

37. The client will also indemnify the consultant for any damages, loss or costs the Consultant, as a result of providing the services, must pay or suffers under its Deed of Appointment with the Director of NZTA to be a heavy motor vehicle specialist certifier. However, this indemnity will not apply to the extent that the damages, costs or loss are due to any breach by the Consultant of its common law duty of care to the Director when performing its obligations under the Deed of Appointment.
38. The Consultant advises that the Consultant have insurance as required by the NZTA Deed of Appointment subject to this variation.
39. The client has the right to complain to the company or directly appeal to NZTA via their website www.nzta.govt.nz if dissatisfied with any matter related to the certification.

Purchase of goods

40. Ownership of goods shall not pass to the buyer until the buyer has discharged all outstanding indebtedness to the Company. Until payment in full of such indebtedness has been made, the purchaser acknowledges and agrees that:-
 - a. The goods supplied are held by the purchaser as Bailee to be sold by it as agent for and on behalf of the vendor.
 - b. The purchaser shall as directed by the vendor store the goods supplied in such a way that it is clear that they are the property of the vendor.
 - c. The purchaser hereby irrevocably gives the vendor, its servants and agents, leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the purchaser to search for and remove any of the goods supplied to or in which the vendor has ownership as aforesaid without in any way being liable to the purchaser or any person or Company claiming through the purchaser, and if the goods or any of them are wholly or partly attached to or incorporated in any other goods, the vendor may where practical sever in any way whatsoever as may be necessary to remove the goods.
 - d. If the goods have been resold by the purchaser prior to payment in full of the outstanding indebtedness of the purchaser, then the proceeds of such sale shall be the property of the vendor but for an amount no more than such indebtedness.
 - e. This clause is intended to protect the vendor in the event of the insolvency for default in payment by the purchaser.
41. A clean receipt by the Company in the form of a Carries Bill of lading, Consignment notes etc., shall be evidence of delivery and of dispatched quantity.
42. The Company will use its best endeavours to deliver your order by the quoted delivery date but the Company will not be liable for delays, shortages or non-delivery arising from circumstances beyond its reasonable control. Deliveries from stock are offered subject to being unsold on receipt of order.
43. The Company reserves the right to refuse cancellation of any order.
44. All warranties, descriptions, representations and conditions as to fitness, suitability for any purpose, tolerance to any conditions or otherwise whether of a like nature or not and whether expressed or implied by law, trade custom or otherwise are expressly excluded. No agent or representative of the Company is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these terms and conditions of sale and the Company is not in any way bound by any such unauthorised statements nor can any such statements be taken to form part of any contract with the Company collateral to the contract.
45. The liability of the Company whether in contract tort or otherwise for any loss, damage or inquiry arising directly or indirectly from any defect in non-compliance of the goods or from any other breach of the Company's obligations hereunder shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever nor shall the Company be liable for any damage or loss caused by the customer's servants, agents, customers or other persons whatsoever.
46. Return of goods will be accepted only by arrangement, and if of standard manufacture and in good condition. Usually this will require freight on return prepaid.
47. Freight policy: the purchaser will pay the cost of freight unless prior arrangements have been made with the Company from whom the goods have been purchased.