

## **HANDRAIL SOLUTIONS LIMITED CONTRACTOR SERVICES STANDARD TERMS AND CONDITIONS**

### **1 Definitions**

- 1.1 "Seller" means Handrail Solutions Limited, its successors and assigns any person acting on behalf of and with the authority of Handrail Solutions Limited.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Seller in the course of it conducting, or supplying to the Client, any Services.
- 1.4 "Services" means all Services supplied by the Seller to the Client at the Client's request from time to time.
- 1.5 "Price" means the price payable (plus any Incidental Items and Services Tax ("GST") where applicable) for the Services as agreed between the Seller and the Client in accordance with clause 5 of this contract.

### **2 Acceptance**

- 2.1 Any act by the Client or those legally acting on behalf of the Client which requests the Seller to begin performing any services or providing and materials will be deemed as acceptance to these Terms & Conditions.
- 2.2 Once these Terms & Conditions are accepted they are irrevocable and cannot be amended without written consent of the Seller.
- 2.3 In the event there is more than one party as a Client to these Terms & Conditions, all Clients will be jointly liable for these Terms & Conditions. Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Should the Client cancel the engagement of the Seller after it has been accepted, the Client agrees they may be held liable for any costs incurred by the Seller in relation to the provision of the services and/or provision of products up to the point of cancellation.
- 2.5 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.

### **3 Errors and Omissions**

- 3.1 The Client acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

### **4 Change in Control**

- 4.1 The Client shall give the Seller 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, change of trustees or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.

### **5 Quotes, Price and Payment**

- 5.1 At the Seller's sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Client; or
  - (b) the Seller'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. On expiry of that period if the Client wishes to proceed a new quote may be required.
- 5.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

- 5.3 Deposit - The Client agrees to pay the Seller's 50% deposit on acceptance of the quote and balance within 7 days of completion of the services unless otherwise agreed. The price includes GST and is the full amount which the Client will pay for the service as quoted.
- 5.4 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 Seller, which may be:
- (a) on Collection of the goods;
  - (b) before Collection of the goods;
  - (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 twenty (20) days of the month following the date of any invoice given to the Client by the Seller.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Seller.
- 5.6 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Where the Client fails to pay any tax invoice on or before the due date, the Client agrees that the Seller will add interest to the total amount owing at the rate of 3% interest per calendar month and that the Client will be liable to pay an accrued interest in addition to the outstanding amount.
- 5.8 In the event the Client defaults in payment of an invoice, the client shall indemnify the Seller from any costs incurred by the Contractor in recovering the outstanding amount including but not limited to solicitors fees.

## 6 Risk

- 6.1 The Client acknowledges that Materials supplied (including but not limited to, paint, varnish, or other finish) may exhibit variations in shade, colour, texture, surface, finish and may fade or change colour over time. The Seller will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.2 The Seller shall not be held liable for any costs, losses or damages where there are delays to pre-construction work not being completed by either third parties or circumstances beyond the Seller's control.
- 6.3 Where the Client has provided instructions, colour samples or specifications for the Seller to complete the Services (including, but not limited to, any requested variation to the original design), then the Seller shall accept no liability whatsoever for the finished Services being deemed as unsatisfactory to the Client or a colour variation of up to 5%.
- 6.4 The Client acknowledges that finished surfaces may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.

## 7 Title

- 7.1 The Seller and the Client agree that where it is intended that the ownership of the incidental items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid the Seller all amounts owing for the Services; and
  - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 7.2 Receipt by the Seller 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 Seller's ownership or rights in respect of the incidental items shall continue.
- 7.3 It is further agreed that;
- (a) the Client is only a bailee of the incidental items and must return the incidental items to the Seller immediately upon request by the Seller;
  - (b) the Client holds benefit of the Client's insurance of the incidental items on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the incidental items being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose or otherwise part with possession of the incidental items. If the Client sells, disposes or parts for the possession of the incidental items then the Client must hold the proceeds of sale of the incidental items on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
  - (d) the Client should not convert or process the incidental items 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 Seller and must dispose of or return the resulting product to the Seller as the Seller so directs.
  - (e) the Client shall not charge or grant an encumbrance over the incidental items nor grant nor otherwise give away any interest in the incidental items while they remain the property of the Seller.

(f) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the incidental items are kept and recover possession of the incidental items.

## 7 Compliance with Laws

- 7.1 The Client and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 7.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

## 8 Health & Safety

- 8.1 The Client agrees that the site will comply with any Health and Safety at Work Act 2015 (HSW) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 8.2 The Client will ensure that if the service to be performed on the Clients property, the Client is authorised to occupy those premises and obtain the service.
- 8.3 The Client will ensure that if the service is to be performed on the Clients property, that all time the property is safe and that all facilities provided by the Client for the purposes of enabling the service to be performed are also safe.
- 8.4 The Seller will ensure at all times in performing the services that all of our employees, contractors and agents comply with our obligations under the Health & Safety Employment Act 1992 (including as that Act may be varied or replaced) and will follow all required Health & Safety Policies and safety practices
- 8.5 The Seller will at all times have current Insurances and will provide evidence on request to the Client.

## 9 Defects

- 9.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Services within a reasonable time following delivery 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.
- 9.2 For defective Services, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 13.1.

## 10 Limitation on Warranty

- 10.1 The Seller warrants that all the services it performs including any product it supplies as part of the service will be fit for its intended purpose and will be capable of being used by the Client for its intended purpose and will perform in accordance within its applicable specifications (if any).
- 10.2 All statutory warranties that can be lawfully excluded are hereby expressly excluded.
- 10.3 To the extent permitted by law, the Seller is not liable for negligence or otherwise to any person including the Client for any loss or damage including consequential loss suffered or incurred in relation to the Client's service or products supplied.
- 10.4 Where the service is not of any kind ordinarily required for personal, domestic or household use or consumption then the liability of the Client is limited pursuant to the *Commerce Act 1986* to, at the discretion of the Client:
- (a) the supplying of the service again; or
  - (b) the payment of the cost/s of having the service supplied again.

## 11 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 supply of Services by the Seller to the Client.

## 12 Intellectual Property

- 12.1 Where the Seller has designed, drawn or developed incidental items for the Client, then the copyright in any incidental items shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.

## 13 Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of three percent (3%) per calendar month (and at the seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.

- 13.2 If the Client owes the seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs of a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 13.3 Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 13, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 13.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by the Seller;
  - (c) 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### **14 Cancellation**

- 14.1 Without prejudice to any other remedies the Seller 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 Seller may suspend or terminate the supply of Services to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 14.2 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before Services are commenced by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).

#### **15 Jurisdiction**

- 15.1 It is agreed by the Parties that these Terms and Conditions will be construed in accordance with the Law of New Zealand and each Party covenants that it submits to the jurisdiction of the Christchurch Courts of New Zealand for the resolution of any dispute under this agreement.

#### **16 Force Majeure**

- 16.1 Neither the Client nor the Seller shall be held liable for any breach of these terms where the breach arises from an act of God, war, natural disaster, terrorism or any other event beyond the reasonable control of either party.