

Unimar Limited Terms and Conditions of Business

1 Interpretation

1.1 For the purposes of these Terms of Trade

Unimar means Unimar Limited

Contract Price means the purchase or contract price, schedule of rates or other consideration payable for the work performed by the Subcontractor as specified in the Purchase Order or may be agreed between Unimar and the Subcontractor.

Contract Work means the Goods to be provided, or work or services to be performed or undertaken for and on behalf of Unimar by the Subcontractor as specified in the Purchase Order.

Delivery Date means the date by which the Contract Works must be completed.

Goods means goods manufactured, sold or supplied by the Subcontractor as described on the Purchase Order.

Purchase Order means the purchase order completed and signed by authorised Unimar personnel engaging the Subcontractor to provide Goods and/or Services to complete the Contract Works and describing the Goods and/or Services to be provided and the Contract Price/s (as the case may be).

Services means the services performed by the Subcontractor as described in the Purchase Order to meet the Contract Works.

Site means the area in which the Contract Works are to be performed.

Contract means the Purchase Order and Terms of Trade together and may or may not include any standard terms and conditions of trade customarily used by the Subcontractor subject to clause 2.2 of these Terms of Trade.

Subcontractor means the person/s or entity/ies named on the Purchase Order.

Terms of Trade means these Terms and Conditions of Business which are incorporated in any quotation, agreement and dealing between Unimar and the Subcontractor. In the event of any conflict between the Purchase Order and the Terms of Trade, the Terms of Trade shall prevail.

2 Performance of Contract Works

2.1 The Subcontractor agrees to carry out the Contract Works in accordance with the Purchase Order which may include instructions, plans, drawings and specifications for the Contract Price.

2.2 The Subcontractor shall carry out its work or supply its services using good trade practice and in compliance with this Contract. In the case of any conflict between this Contract and any terms and conditions customarily used by the Subcontractor, the Contract by Unimar will prevail. The only circumstances where any variation to this Contract will apply is where Unimar expressly agrees in writing to such variation.

2.3 Any drawings, plans or specifications provided to the Subcontractors to carry out the Contract Works shall remain the property of Unimar and shall be returned to Unimar upon the completion of the Contract Works or earlier termination of the Contract.

2.4 The Subcontractor agrees to use its reasonable endeavours to protect and preserve the property of the landowner upon which the Contract Works are undertaken. Any damage caused in consequence of the Contract Works as a result of the negligence of the Subcontractor and/or its employees is to be remedied to the satisfaction of the landowner at the cost and expense of the Subcontractor and the Subcontractor agrees to and does hereby indemnify and hold harmless Unimar for any liability incurred by it in this respect.

3 Conditions of Payment

- 3.1 Unless otherwise agreed in writing between Unimar and the Subcontractor, payment of the Contract Price (or any progress payments as may be agreed between the parties) will be made in full within 30 days of receipt of invoice by Unimar.
- 3.2 A Subcontractor may suspend work and shall reserve the right to cancel the Contract upon provision of 7 days prior written notice without prejudice to any claim the Subcontractor may have for loss or damage incurred in the event that Unimar fails to pay any invoice in accordance with this clause 3, provided at all times that the Subcontractor is not in default in respect of any of its obligations under this Subcontract.
- 3.3 All invoices rendered by the Subcontractor to Unimar shall be tax invoices completed in accordance with the Goods and Services Tax Act 1985. Tax invoices shall be submitted by the Subcontractor immediately following the completion of the Contract Work/s or as otherwise agreed between Unimar and the Subcontractor.
- 3.4 Unimar reserves the right to request other written or electronic materials as it may reasonably require as evidence that work for which the claim is made has been completed.

4 Delivery and Completion

- 4.1 The Subcontractor will meet the agreed Delivery Date (if applicable) outlined in the Purchase Order subject only to any delay caused by Unimar which results in the Subcontractor being delayed in carrying out any part of the Contract Works.
- 4.2 Any claims for errors in respect of short delivery of Goods, if applicable, must be made by Unimar to the Subcontractor within 14 days of delivery of Goods.
- 4.3 Except where otherwise agreed in writing with Unimar, the delivery of any goods or provision of any services (as the case may be) will be deemed to have been made upon delivery to an agreed location and appropriate inspection by Unimar in respect of Goods, or when provided, signed off and accepted by Unimar in respect of the provision of Services.
- 4.4 To the extent the Subcontractor fails to complete the Contract Work/s by the agreed Delivery Date (if applicable) the Subcontractor will indemnify Unimar for any loss suffered or additional costs incurred by Unimar as a direct result of the Subcontractors failure to complete the Contract Work/s.
- 4.5 Unimar shall be entitled to set off any such loss suffered or costs incurred against the Contract Price under clause 3 of the Contract.

5 Risk and Insurance, and Title

- 5.1 All risk and responsibility and liability for premiums and calls in relation to insuring the Contract Work/s supplied by the Subcontractor shall remain with the Subcontractor.
- 5.2 All goods supplied by Unimar in the course of performance of the Contract Works shall remain at the risk of Unimar at all times.
- 5.3 Title to and risk in any Goods supplied by the Subcontractor shall pass to Unimar upon delivery in accordance with clause 4.3 of the Contract.

6 Subcontracting

- 6.1 The Subcontractor shall not be entitled to subcontract any part of the Contract Works unless otherwise agreed by Unimar, whereupon the Subcontractor shall ensure that any such subcontractor shall agree to be bound by the terms of the Contract.

7 Inspection and Quality

- 7.1 Unimar reserves the right to visit the Subcontractor's premises or any location where the Contract Works are being performed to check the quality of the Goods being supplied (if applicable) or the Services being performed under the Contract.
- 7.2 The Subcontractor agrees to permit Unimar to enter premises as contemplated by clause 7.1, provided such entry does not unduly interfere with the Subcontractors performance of its obligations under the Contract or normal business operations, for the purposes of reviewing any documents and/or health and safety and/or quality systems directly relating to the Contract Works, to ascertain compliance with the requirements of this Subcontract.
- 7.3 The quality of Goods and/or Services supplied will be in accordance with any specifications or standards that may be outlined in the Purchase Order.

8 Warranty

- 8.1 The Subcontractor warrants that:
- (a) It will perform the Contract Works to a good and workmanlike standard using parts, components, materials and equipment of a good standard, and will supply and utilise adequately trained, skilled and capable employees (as the case may be) in the performance of its obligations under the Contract; and
 - (b) The Goods (if applicable) will comply with any specifications and requirements that may be set out in the Purchase Order, such warranty to continue for a period of 3 months from the completion and delivery of the Contract Works to Unimar by the Subcontractor.
- 8.2 The Subcontractor will pass on to Unimar the benefit of any manufacturer's warranties relating to any Goods supplied.

9 Compliance with Laws

- 9.1 The Subcontractor will comply with all statutes, regulations and other laws, both national and local, relating to all aspects of carrying out the Contract Works under the Contract which include but are not restricted to compliance with the Health and Safety in Employment Act 1992 and Resource Management Act 1991.

10 Access to Site, Security and Safety

- 10.1 The Subcontractor shall have access to that part of the Site in which the Contract Works are to be carried out during usual working hours or as otherwise agreed with Unimar.
- 10.2 The Subcontractor shall be responsible for the maintenance of safety and environmentally acceptable work practices in accordance with all applicable New Zealand legislation by its employees whilst carrying out the Contract Work.
- 10.3 Notwithstanding clause 10.2 above, Unimar has overall responsibility for safety practices on the Site and expressly reserves the right to intervene and at the Subcontractors expense require work to cease or other appropriate action to be taken if in Unimar's opinion, unacceptable safety practices are being adopted that may or will affect the safety of all individuals on the Site or the compromise the Contract Works.
- 10.4 The Subcontractor shall ensure that any on-site supervisor has made him/herself known to Unimar in order to establish the liaison between Unimar staff and subcontractors and the Subcontractor to deal with safety and other issues.
- 10.5 The Subcontractor shall ensure that at least 24 hours prior to entering the Site it provides Unimar a list of those personnel who will be working in the Site. That list is to be updated with any changes during the term of the Contract.

- 10.6 Subcontractor's personnel will be subject to security checks by Unimar in the usual manner and Unimar reserves the right to refuse entry to any employee of the Subcontractor where they are otherwise in breach of any of the provisions of the Contract.

11 **Liability and Insurance**

- 11.1 The Subcontractor agrees to indemnify and hold harmless Unimar from and against all actions, claims, suits, losses and expenses suffered by Unimar, its principals, agents, contractors and subcontractors resulting from the Subcontractor carrying out the Contract Works or the Subcontractor otherwise being in default under the Contract.

- 11.2 The Subcontractor acknowledges that it is a condition paramount that it procures, carries and maintains General Public Liability Insurance for the duration of the Contract with a minimum amount of cover of NZ\$1,000,000.00. Such insurance will be upon usual commercial terms and with a reputable insurance company approved by Unimar, such approval not to be arbitrarily withheld.

- 11.3 The Subcontractor will produce reasonable evidence as to the currency of insurance referred to in clause 11.2 to Unimar prior to the commencement of Contract Works under the Contract.

12 **Termination**

- 12.1 In the event of;

- (a) Any material default by the Subcontractor under the Contract as determined by Unimar which the Subcontractor fails to remedy within 48 hours of receiving notice of such default from Unimar; or
- (b) The Subcontractor being placed into liquidation, voluntary administration, receivership or bankruptcy;
- (c) The Subcontractor having supplied any incorrect or misleading information of a material nature to Unimar that Unimar has either relied on in entering into the Contract or places Unimar at risk of failing to comply with any obligations it may owe to other contractors and/or subcontractors,

then without prejudice to any other remedies available to Unimar in tort, equity, contract or common law, Unimar may terminate the Contract immediately upon provision of notice in writing to the Subcontractor.

13 **Intellectual Property**

- 13.1 Any intellectual property rights arising out of the Contract Works performed by the Subcontractor under the Contract shall transfer to Unimar upon completion of the Contract Works or Termination of the Contract under clause 12 (as the case may be).

- 13.2 The provisions of clause 13.1 shall survive the Termination of the Contract for any reason whatsoever.

14 **Confidentiality**

- 14.1 It is hereby expressly agreed and understood by the Subcontractor that the Contract, including but not restricted to Contract Works and Contract Price, are at all times strictly private and confidential, and may only be released and or divulged, in whole or part to third parties, irrespective of the form (whether verbal, electronic or otherwise) for the sole purpose of receiving financial and/or legal advice or for the purposes of fulfilling any obligation either party may have under the Contract.

- 14.2 The parties shall ensure that its respective employees, agents, contractors, sub-contractors or representatives that have access to any information contemplated by this

clause 14 are informed of the confidential nature thereof and require such persons or entities to be bound by these confidentiality obligations.

14.3 The provisions of this clause 14 shall survive the termination of the Contract. A party shall continue to be bound by this clause notwithstanding they are no longer a party to the Contract

15 **Variation of Contract**

15.1 The Contract (including the Contract Works and/or Contract Price) may be amended or modified by approval of the parties from time to time.

16 **Governing Law**

16.1 The Contract shall be governed by and construed and enforced in accordance with the laws of New Zealand.