

## TERMS AND CONDITIONS FOR ANDREWS PROPERTY SERVICES LIMITED

### 1. DEFINITIONS

1.1 Words have the following meanings in this Contract unless the context otherwise requires:

“**Allowance**” means such sums (if any) specified in the Quote as an allowance for carrying out part of the Works;

“**CCA**” means the Construction Contracts Act 2002;

“**Client**” means the person named as the Client in the Contract Documents or their representative;

“**Consents**” means all licenses, statutory and regulatory consents, approvals and compliance certificates which may be required for the construction of the Works and for the use of the Works when completed;

“**Contract**” means this contract between the Client and the Contractor and includes all Contract Documents;

“**Contractor**” means Andrews Property Services Limited;

“**Contract Documents**” means the Quote, these terms and conditions and the Plans and Specifications;

“**Contract Price**” means the total price payable by the Client for the Works specified in the Quote as adjusted for all Allowances and Variations and if no Contract Price is stated means the current price for such Works when carried out by the Contractor;

“**Defects Liability Period**” means the period specified in the Quote following Practical Completion during which the Client must notify the Contractor of any defects in the Works;

“**Payment Claim**” is a claim issued by the Contractor to the Client in accordance with section 10 and the CCA;

“**Payment Schedule**” is a statement from the Client to the Contractor in accordance with the CCA;

“**Plans and Specifications**” are the plans and specifications attached to this Contract or referred to in the Quote;

“**Practical Completion**” has the meaning set out in clause 5.3;

“**Quote**” means the quotation or tender from the Contractor for the Works;

“**Retention**” is the amount of the Contract Price which is retained as set out in the Quote;

“**Site**” means the land, buildings and other places made available by the Client where the Works are to be carried out as identified in the Contract Documents;

“**Variations**” are those variations or alterations to the Plans and Specifications either Instructed in writing by the Client or agreed to in writing by the Client and the Contractor; and

“**Works**” means the construction work and/or services which the Contractor is to carry out described in the Contract Documents subject to adjustments, extras and Variations.

### 2. QUOTES

2.1 Any Quote shall be valid for a period of 30 days from the date of the Quote unless otherwise stated in the Quote.

2.2 Any of the following done by or on behalf of the Client shall constitute a binding contract and acceptance of these Terms and Conditions:

- (a) express or implied acceptance of the Quote;
- (b) giving any instruction to the Contractor which is acted upon;
- (c) giving any express or implied authority to the Contractor to commence the Works.

2.3 Quotes shall exclude GST unless expressly stated.

2.4 The Contractor may alter the Quote any time prior to acceptance of it by the Client.

2.5 These Terms and Conditions shall prevail notwithstanding the provision of any alternative terms and conditions by the Client.

### 3. **CONSENTS**

3.1 The Client shall obtain project information memoranda and Consents as required for the carrying out of the Works and the code compliance certificate for the use of the Works once complete unless otherwise stated in the Quote.

3.2 If Consents contain conditions affecting the design or Plans and Specifications then the Contractor and the Client shall consult. If compliance with conditions would cause a delay in the completion of the Works or additional cost that a reasonably experienced contractor could not have reasonably foreseen at the time this Contract was signed, the compliance shall be treated as a Variation.

### 4. **POSSESSION AND ACCESS**

4.1 The Client shall provide to the Contractor, Sub-Contractors and third party contractors all reasonable access to the Site as is necessary to carry out the Works.

4.2 The Client shall identify and mark underground services and boundary pegs if required prior to the Works commencing.

4.3 The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

4.4 The Contractor is entitled to carry out the Works between 7.00am and 7.00pm on any day subject to the limitations in the Contract Documents.

4.5 If the Contractor encounters adverse physical or other conditions which could not have been reasonably foreseen at the time the Quote was tendered, then the Contractor must notify the Client as soon as reasonably practicable and the event shall be treated as a Variation.

### 5. **COMMENCEMENT AND COMPLETION**

5.1 The Contractor shall commence the Works on such date as agreed between the Contractor and the Client. The Works are to be completed within a reasonable timeframe from commencement of the Works with due regard for delays relating to Variations, weather, material shortages, labour shortages or any other factors beyond the reasonable control of the Contractor.

5.2 The Contractor shall be entitled to payment of time related costs if the Contractor is delayed by any of the following events:

(a) The net effect of any Variation; or

(b) Any circumstances not reasonably foreseeable at the time the Quote was tendered and not due to the fault of the Contractor.

5.3 Practical Completion of the Works occurs when everything has been done except for minor omissions and minor defects that the Contractor has reasonable grounds for not promptly completing.

### 6. **SUB-CONTRACTING**

6.1 The Contractor may sub-contract the Works without the prior consent of the Client.

### 7. **VARIATIONS**

7.1 The Client is entitled to Instruct the Contractor to carry out Variations.

7.2 The Client may not, without the consent of the Contractor, order any Variation after Practical Completion.

7.3 The cost of a Variation (if any) must be agreed in writing by the Client and the Contractor.

7.4 If the cost of any Variation is not agreed before the Variation work starts, then the Client must pay the Contractor's reasonable costs of the Variation.

7.5 This Contract includes the Allowances set out in the Contract Documents. Any additional costs over and above the stated Allowances must be added to the Contract Price and any reduction in the cost of the Allowances must be deducted from the Contract Price.

7.6 If any materials specified are not reasonably procurable, the Contractor may substitute other materials of similar quality and nature as are reasonably practicable. Any difference in the cost of such substitution materials shall be a Variation.

7.7 The Contract Price may be increased by the amount of any reasonable increase in the cost of supply beyond the control of the Contractor unless otherwise stated in the Quote.

### 8. **INSURANCE**

8.1 The Client shall arrange insurance of the Works and any existing structures in joint names unless insurance by the Contractor is expressly provided for in the Quote.

### 9. **PAYMENTS**

- 9.1 The Contractor may give Payment Claims to the Client at the time or at the stages stated in the Contract Documents and if not so stated on a monthly basis. Each Payment Claim shall:
- (a) Be in writing and state that it is made under the CCA;
  - (b) Refer to this Contract;
  - (c) Identify the Works and the relevant period to which the claim relates; and
  - (d) State the claimed amount, detail how that claimed amount is calculated and state the due date for payment.
- 9.2 Within 7 days of the Client receiving a Payment Claim the Client shall either:
- (a) Pay the claimed amount stated by the Contractor in the payment claim; or
  - (b) Provide a Payment Schedule to the Contractor and pay the Contractor the scheduled amount set out in the Payment Schedule.
- 9.3 The Contractor may give a Payment Claim at or immediately following Practical Completion for 60% of the amount retained as the Retention.
- 9.4 The Contractor may give a Payment Claim for the balance of the amount retained as the Retention on the expiry of defects liability period.
- 9.5 The Contractor may require the Client to pay interest at the rate of 2.5% per month or part month on amounts payable and remaining unpaid after the due date together with any expenses incurred by the Contractor (including solicitors fees on a solicitor and client basis or debt collection costs) enforcing its rights under this Contract.
- 9.6 If any amounts remain unpaid after the due date the Contractor may give 10 days notice of intention to suspend work, and suspend work at the expiry of that period until paid in full. If work is suspended the Client must pay the Contractor as a Variation the reasonable costs incurred in suspending and resuming work.
10. **DEFECTS LIABILITY**
- 10.1 The Contractor shall make good all defects in and omissions from the Works notified before the end of the Defects Liability Period.
- 10.2 In each Payment Claim the Client shall be entitled to deduct from the amounts which the Contractor would otherwise be entitled the Retention percentage set out in the Contract Documents.
11. **CANCELLATION**
- 11.1 The Client may cancel this Contract by notice in writing if:
- (a) The Contract has become impossible to perform or is otherwise frustrated;
  - (b) The Contractor is persistently, flagrantly or willfully neglecting to carry out the Contractor's obligations under this Contract.
- 11.2 The Contractor may cancel this Contract by notice in writing if:
- (a) amounts due remain unpaid after the expiry of time provided for payment; or
  - (b) the Client is insolvent or the Contractor acting reasonably believes the Client will be unable to pay its debts when due.
- 11.3 If this Contract is cancelled the Client or the Contractor (as the case may be) shall pay to the other the amount the other is entitled to be paid under this Contract up to the date of cancellation without prejudice to any right to claim for any prior breach.
12. **DISPUTES**
- 12.1 If a dispute arises between the Client and the Contractor relating to this Contract or the Works, then the Client and the Contractor shall act in good faith and endeavour to resolve the dispute between them amicably and as soon as possible.
- 12.2 If a dispute is not resolved in terms of clause 12.1 in 7 days either party may give a notice to the other party requiring that the dispute be referred to mediation.
- 12.3 The Client and the Contractor must endeavour to agree on a mediator and shall submit the dispute to him or her. If the Client and the Contractor cannot agree on a person to act as mediator, the mediator shall be appointed at the request of either party by an office holder of LEADR New Zealand Inc or the Arbitrators & Mediators Institute of New Zealand Inc (AMINZ), or the nominee of that office holder. The guidelines governing the mediation are to be set by the Client and the Contractor. Failing agreement on the guidelines within 7 days after the appointment of a mediator, the mediator shall set the guidelines which will govern the mediation.

The costs of the mediator are to be borne equally by the parties.

12.4 If settlement has not been reached within 50 days of notice requiring mediation, the Client or the Contractor may refer the dispute to arbitration under the Arbitration Act by giving a further notice. If the Client and the Contractor cannot agree on an arbitrator within 7 days from the date on which the notice requiring arbitration was first given by one party to the other, either party may request the arbitrator be appointed by either office holder set out in clause 12.3 or that office holder's nominee. The costs of the arbitrator (subject to any award made by the arbitrator) are to be borne equally by the Client and the Contractor. The arbitrator may award interest upon any amount due and payable. The award of the arbitrator is final and binding on the Client and the Contractor.

### 13. GENERAL

13.1 So far as the law permits, the Contractor, its directors, employees and agents shall not be liable in any way for any indirect or consequential loss or loss of profit, whether at contract or tort, including negligence.

13.2 So far as the law permits, the Contractor's liability under this Contract or otherwise at law shall be limited to the Contract Price.

13.3 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client requires the Works for business purposes in terms of section 2 and 43 of that Act.

13.4 The Client acknowledges that it has received, read and understood these Terms and Conditions.

13.5 Property and ownership in any goods and materials shall not transfer to the Client until payment of the Contract Price in full and all goods and materials shall be subject to a purchase money security interest.

13.6 Risk in goods and materials shall transfer at the time of delivery.

13.7 The Client grants a security interest to the Contractor under the Personal Property Securities Act 1995 ("PPSA") over any goods and materials supplied by the Contractor to the Client. The Client shall upon the Contractor's request, promptly execute any document, contract, agreement, deeds or do any other action as the Contractor may require to ensure that any security interest created constitutes a perfected security interest over the goods and materials.

13.8 The Client waives any right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest under the PPSA.

13.9 Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract. The Client's rights as a debtor in sections 116, 120(2), 121, 125-127, and 129 of the PPSA shall not apply to this Contract.

13.10 If any part, term or provision of this Contract shall be held invalid, void, illegal or unenforceable the validity, existence, legality or enforceability of the remainder of this Contract shall not be affected, prejudiced or impaired.

13.11 If the Client defaults in payment of monies due to the Contractor for a period of 14 days from the due date, the Client hereby irrevocably appoints each of the directors of the Contractor as its attorney to take

possession of any unpaid goods and materials of the Contractor on the property and to dispose of such goods and materials and to enforce all its rights and remedies to recover all monies owed to the Contractor .

13.12 The Contract Documents embody the entire agreement of the Client and the Contractor. The Client shall not be entitled to rely upon any statement or representation of the Contractor which is contrary to the Contract Documents.

13.13 The Client shall have no rights of set-off.