

## Consultancy Solutions Limited

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# Terms & Conditions

All goods and services supplied by Consultancy Solutions Limited ("we", "our" or "us") to the Customer ("you" or "your") are supplied on the following terms unless otherwise agreed in writing between you and us.

## 1. Acceptance

- 1.1 Unless withdrawn by us prior to your acceptance, any offer, quotation, proposal or similar document ("Offer") from us to you shall remain valid for your acceptance for 30 calendar days from the date of such Offer and shall be deemed to incorporate these Terms of Trade.
- 1.2 The supply of goods and/or services will only commence upon receipt by us of the signed acceptance of our Offer from you, and is subject to our credit check on you.
- 1.3 We may cancel an accepted Offer by notifying you in writing at any time prior to commencing the supply of goods and/or services.
- 1.4 Offers are conditional on the granting of all licences, permits and consents which are required to enable us to provide the goods and/or services. We are not liable for any costs or damages arising from any refusal or delay in the granting of such licences, permits and consents.
- 1.5 Offers are for the supply of goods and/or services only. No Offer shall include the supply of electricity or any line function services (as defined in the Electricity Act 1992). You will need to enter into a separate contract with an electricity supplier for the supply of electricity and line function services.

## 2. Safety, Quality & Environment

- 2.1 We will comply with the Health and Safety in Employment Act 1992 ("HSEA"), all approved codes of practice under the HSEA, the Health and Safety in Employment Regulations 1995, all other statutory and regulatory provisions, by-laws, codes and standards, your reasonable health and safety requirements (of which we have been made aware by you, prior to submission of any Offer), including potential hazard, near-miss, incident and overall health and safety statistics reporting, hazard control and working to reasonable health and safety plans.
- 2.2 We will comply with the requirements of the Resource Management Act 1991 ("RMA"), all approved codes of practice under the RMA, your reasonable environmental management requirements (of which we have been made aware by you, prior to submission of any Offer), including the overall management of environmental issues, minimising any negative impact on the environment, taking reasonable steps to minimise our carbon footprint, having effective environmental management systems, including managing and reporting non-compliance, recording and reporting incidents and ensuring reasonable compliance with relevant standards and working to reasonable environmental management plans.
- 2.3 We will supply the goods and/or services to agreed specifications and standards, fit for the agreed purpose set out in our Offer, in accordance with good industry practice, and utilising, where appropriate, only new components. We will operate a quality system which shall include the overall management of quality, quality assurance, control and reporting, managing defects and non-compliance, incident management, compliance with relevant standards and working to reasonable quality plans.

## 3. Price

- 3.1 Where goods and/or services have been quoted on the basis of unit rates according to the quantity goods and/or services supplied, the final quantities shall be established by the measurement of the completed goods and/or services supplied.
- 3.2 The prices offered are based on current rates, insurance, materials, labour, freight, overhead costs, reasonably foreseeable physical and weather conditions and the New Zealand currency exchange rate existing at the time of Offer. We shall be entitled to charge you any increased costs in these factors which arise after the date of Offer.
- 3.3 The price of any agreed variations (including changes to the goods or services, changes to the scope or timing of the goods and/or services and/or substitution of any materials) will be included by us in our payment claims I invoices and, unless otherwise stated, will be based on our normal rates for such goods or services in accordance with our relevant standard charging policies. You agree to pay such amounts.
- 3.4 We shall be entitled to increase any price contained in an Offer if at any time the cost of us supplying such goods and/or services increases due to factors outside of our control. You agree to pay such increases.
- 3.5 Unless otherwise specified, all amounts in any Offer are exclusive of Goods and Services Tax (GST) and any other taxes, duties and levies (if any) which, unless specified otherwise, are payable in addition to the prices offered.

## 4. Terms of Payment

- 4.1 Monthly payment claims/invoices will be raised for progress payments based on goods and/or services supplied during the preceding month. Such payment claims/invoices shall be paid by you by the 20th of the month following the date of the payment claim/invoice.
- 4.2 All payments must be made in cleared funds and you may not set off, withhold or deduct any amount from moneys payable to us.
- 4.3 Default interest will be the aggregate of the following:
  - a. An immediate interest charge of 10% of the outstanding amount as at the due date; plus
  - b. 5% per annum, calculated daily, on the outstanding amount from time to time (including the interest charge in a. above) from the due date until paid in full, together with any interest accrued.
- 4.4 Additional charges incurred in collecting any overdue amounts (including costs incurred on a solicitor-client basis and debt collector's costs) shall be payable by you, on demand.
- 4.5 If your account remains unpaid after its due date we will not send you a reminder notice. If you have not communicated to us that the amount unpaid is subject to a genuine dispute, we may refer the unpaid debt to a debt collection agency for recovery.
- 4.6 Payments made to us shall be net of taxes, withholdings, duties, levies or the like payable in the country in which the payment is originated.
- 4.7 Placement Fee's for any employees or contractors introduced by CSL attracts a placement fee of 15% of annual starting salary.

## 5. Warranty

- 5.1 If you advise us, in writing, of any defects in the goods and/or services supplied by us (such defects not including normal wear and tear) within three months of supply of the goods or services, we will repair or replace those goods and/or make good those services within a reasonable period which, in our reasonable opinion, are defective. All other warranties with respect to the goods and/or services supplied by us, express or implied, shall be excluded to the fullest extent permitted by law. In determining whether any goods and/or services are defective, we may require you to provide further evidence or information to our satisfaction, at your cost.
- 5.2 This warranty will not apply to any goods and/or services that:
  - a. Have any work done on them, were modified or tampered with, by anyone other than us or our authorised agents; or

- b. Are used for any purpose other than that they were originally acquired for; or
  - c. Are used in a reckless or negligent manner; or
  - d. Are the subject of abnormal use or abuse.
- 5.3 All costs incurred by us for investigating and/or rectifying any defects caused due to any of the above situations will be charged to your account and shall be payable on demand.
- 5.4 You agree that the provisions of the Consumer Guarantees Act 1993 ("CGA") shall not apply if the goods or services are acquired by you for business purposes.

## 6. Delay

- 6.1 We will not be responsible for any loss, damage or delay caused by events beyond our reasonable control. Such events include (but are not limited to) acts of God, war, invasion, civil war, hostilities (whether war is declared or not), revolution, insurrection, rebellion, adverse weather, epidemic, accident, plant breakdown, disputes with workers, strikes, lockouts, fire, earthquake, tsunami, flood, blockades, shortage or delays in transport, shortage of fuel, power, raw materials, or labour, failure of manufacturers or suppliers, inaccessibility to a site, civil unrest, riots, crime, requirements of governmental authorities or failure to get local approvals or a withdrawal of any licence, permit or consent, any act or omission by you or any other event beyond our reasonable control.
- 6.2 In any such event, we may, at our sole discretion, either cancel the supply of goods and/or services in part or full, or suspend delivery of the goods and/or services or parts thereof until the cause of delay has been completely removed and you shall have no claims whatsoever against us as a result of any cancellation or suspension.
- 6.3 Any time stated for delivery is an estimate only. We are not liable for any delay in delivery.

## 7. Access for installation

- 7.1 Timing of and prices for the supply of goods and/or services are based on free access to the relevant site and clear passage to all parts of it. Additional costs associated with interference and/or prevention of us from proceeding with the provision of goods and/or services or being required to temporarily suspend progress or to withdraw our resources shall be payable by you on demand. We shall not be responsible for delays attributable to any problems with access.
- 7.2 All goods, services, testing, plant and materials necessary for the provision of goods and/or services to be supplied by us and which are not included in the Offer must be provided by you in such manner and time so as to cause no delay to the provision of goods and/or services by us.

## 8. Ownership and Risk

- 8.1 All goods (including parts and materials) provided by us shall remain the sole property of us and title to all such goods supplied shall not pass to you until all amounts payable by you are received by us in full in cleared funds. These Terms of Trade constitute a security agreement in all goods supplied by us (whether previously or in the future) to you as security for all of your obligations to us under these Terms of Trade and such security interest is registrable on the Personal Property Securities Register in accordance with the Personal Property Securities Act 1999 ("PPSA").
- 8.2 We will exercise reasonable care in dealing with any goods consigned to us by you. However, in the absence of gross negligence by us, you will have the ultimate responsibility for such goods and shall insure them appropriately.
- 8.3 Default in any payment by the due date will entitle us or any person authorised by us, at our absolute discretion and without notice, to enter upon any premises where any goods may be installed or stored, and to inspect, dismantle and/or remove such goods without any liability for any associated loss or damage and without prejudice to any of our rights. You hereby indemnify us for any loss, costs (including solicitor-client costs) or damages arising as a result of exercising our rights pursuant to this clause.
- 8.4 Until we have been paid in full:
- a. You shall retain possession (subject to our rights to recover the goods under these Terms of Trade or at law) of the supplied goods in trust for us as the beneficial owner and shall store them separately and clearly identify them as belonging to us;
  - b. If you sell any of the goods, then the proceeds of the sale shall belong to us and shall be retained by you in trust for us and shall not be intermingled with any other monies or paid into any overdrawn bank account and shall at all times be kept identifiable as monies held in trust for us.
- 8.5 All goods to be supplied and installed by us under these Terms of Trade shall be at your risk upon installation and all goods supplied by us not requiring installation by us shall be at your risk upon collection by you (or a nominated person or carrier) or delivery to the site advised by you in writing at the time of acceptance of an Offer, whichever is the earlier.
- 8.6 At our request, you will promptly make, do, execute and deliver (or cause to be made, done, executed and delivered) any documents, contracts, agreements or deeds that we may require from time to time to give effect to these Terms of Trade including, without limitation, doing all such things as we may require in order to ensure that the security interest created under these Terms of Trade constitutes a perfected security interest over all materials, parts and other goods, including providing any information we request to enable us to complete a financing statement or financing change statement.
- 8.7 You waive any right to receive a verification statement under the PPSA. Sections 114(1)(a), 133 and 134 of the PPSA and your rights as a debtor in sections 116, 120(2), 121, 125-127, 129 and 131 of the PPSA shall not apply to these Terms of Trade.

## 9. Drawings and Documentation

- 9.1 Any drawings or technical specifications included with an Offer are for information only to illustrate the goods and/or services. These drawings or documents are not necessarily correct.
- 9.2 We shall retain copyright or ownership in all drawings, specifications and other documents ("Intellectual Property") prepared by us. Subject to clause 9.3, you shall have a non-transferable right to use such Intellectual Property only for the goods and/or services to which these Terms of Trade relate and the agreed purpose set out in the Offer.
- 9.3 The ownership of data and factual information collected by us and paid for by you shall, after payment by you, lie with you.
- 9.4 You shall have no right to use any Intellectual Property where any overdue amount remains owing by you to us, on any account whatsoever.

## 10. Limitation of Liability

- 10.1 Our maximum cumulative liability shall be limited to the total price for the goods and/or services in respect of which such liability arises.
- 10.2 Notwithstanding the warranty provisions in clause 5, we shall not be liable for any loss of profit, loss of use, loss of production, loss of contracts or any other indirect or consequential loss or damage or expense of any kind, nor for any loss of profit, economic loss or similar claims suffered by you or any other parties.
- 10.3 To the extent permitted by law, all terms, conditions and warranties, except those expressly set out in and relating to the goods and/or services to be supplied pursuant to these Terms of Trade, are expressly excluded.

## 11. Authority under the Privacy Act

11.1 We may require information relating to your credit history prior to the supply of goods and/or services to you. Your acceptance of an Offer shall authorise us to obtain, and any person or company to provide, any such information and shall authorise us to furnish the details of such Offer or any subsequent matters relating to such Offer. Pursuant to any credit history inquiry, we may elect to either cancel any Offer or seek to amend the terms or conditions of an Offer

## 12. Additional Obligations

12.1 Except where the goods or services are supplied in New Zealand or it would be normal industry practice for you to do so, to enable us to supply the goods and/or services specified in any Offer, you will, at your own cost:

- Obtain all necessary local approvals and consents;
- Ensure that our staff are granted the necessary permits to supply the goods or carry out the services and temporarily stay in the country;
- Advise us, prior to submission of any Offer, of the applicable standards and all compliance requirements, including but not limited to, any statutory health, safety or environmental management legislation: and
- Provide us with an indemnity in respect of the above.

## 13. Default

13.1 We may, by notice in writing, suspend the provision of any goods and/or services, and/or terminate our Offer or any agreement to which these Terms of Trade relate, if you:

- Fail to pay any amount due under these Terms of Trade on the due date for payment;
- Commit a breach of any provision of these Terms of Trade which is incapable of remedy;
- Commit a breach of any provision of these Terms of Trade which is capable of remedy and fail to remedy such breach within 10 days' notice from us requiring you to do so;
- Become insolvent, commit an act of bankruptcy or (being a company) are placed into liquidation or receivership, have any statutory manager, administrator or similar person appointed, enter into any arrangement or composition with your creditors, have any distress or execution levied upon your goods or allow any judgment against you to remain unsatisfied for more than 24 hours;
- No longer carry on business or threaten to cease carrying on business; or
- Suffer a change of ownership or effective control or a material change in the nature of your business.

13.2 If the services to be provided by us are suspended and/or the Offer or any agreement to which these Terms of Trade relate is terminated under clause 13.1, we shall be entitled to recover from you any costs, loss or damages incurred as a result of such suspension or termination.

13.3 You hereby indemnify us in respect of all costs, charges and expenses (including solicitor-client costs) incurred by us in consequence of or in connection with any breach or default by the you in the performance of any of the terms of an Offer.

## 14. Governing Law

14.1 All Offers and any agreement thereof are governed by the law of New Zealand. We and you agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

## 15. Disputes

15.1 If any dispute of any kind whatsoever arises between you and us in connection with or arising out of the supply of goods and/or services (whether during the progress of said supply or after their completion and whether before or after the termination, abandonment or breach of the these Terms of Trade), either party shall promptly notify the other party, in writing, of the dispute and the parties shall use reasonable endeavours to resolve the dispute in good faith and without delay.

15.2 Any dispute which is not resolved under clause 15.1 within 10 business days, or such further time as the parties may agree, shall be referred for resolution to each party's chief executive or equivalent.

15.3 Any dispute which is not resolved under clause 15.2 within 10 business days, or such further time as the parties may agree, shall be referred for resolution to by a mediator appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand (or its nominee).

15.4 Any dispute which is not resolved under 15.3 within 10 business days, or such further time as the parties may agree, shall be referred to a sole arbitrator to be agreed between the parties or, if an arbitrator cannot be agreed within 5 business days, a sole arbitrator appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand (or its nominee), upon the application of either party. The arbitration shall be subject to and in accordance with the provisions of the Arbitration Act 1996 (NZ). The arbitrator's decision shall be binding on both parties.

15.5 Nothing in this section prevents either party from seeking urgent interlocutory relief from the courts.

## 16. General

16.1 Any act, regulation, statutory or regulatory provision, by-law, code or standard referred to herein shall include any amendment or replacement to any such document.

16.2 If there is any conflict between any Offer and these Terms of Trade, the Offer shall prevail.

16.3 These Terms of Trade and any Offer shall, unless otherwise agreed, constitute the entire agreement between you and us for the supply of the relevant goods and/or services and shall supersede all preceding negotiations, representations and warranties, whether in writing or oral, unless the same are expressly incorporated herein.

16.4 No failure to exercise and no delay in exercising any right power or remedy under these Terms of Trade, will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

16.5 Any provision of these Terms of Trade which is prohibited, invalid or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition, invalidity or unenforceability. This will not invalidate the remaining provisions of these Terms of Trade or affect the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or material provisions of these Terms of Trade.

16.6 You shall not assign your rights or obligations under these Terms of Trade without our written permission, which shall not be unreasonably withheld. We are entitled at any time to assign to any other person our rights (including but not limited to any debt owing) and obligations under these Terms of Trade.

16.7 We shall have in place appropriate insurances, giving appropriate cover (value and duration), for any goods or services supplied by us, including contract works, public liability, professional indemnity and workers or accident compensation insurances.

16.8 We will keep all information supplied by you and identified by you as requiring such as confidential.

## 17. Review

17.1 We reserve the right to review any of these Terms of Trade at any time. If, following any such review, there is to be any change to these Terms of Trade, that change will take effect from acceptance of the first order for goods and/or services by you following notice of the

change being given to you.