

TERMS OF TRADE

Work and Materials supplied by Rock Control LTD (the "Contractor") are supplied to the PERSON, PARTNERSHIP or COMPANY (the "Client") for sale on the following terms and conditions:

1. Terms of Contract between Contractor & Client

- a. These Terms of Contract between the Contractor and Client shall apply to all orders accepted by the Contractor or quotations approved by the Client and that these Terms and Conditions shall prevail and take precedence over any written document or oral message from the Client and in the case of conflict or dispute between the parties these Terms and Conditions shall prevail. Where the Contractor fails to enforce any of the Terms and Conditions of this contract or fails in any way to exercise its rights under this contract the Contractor will not be deemed to have waived these rights with respect to any Term or Condition or right.

2. Definitions

- a. **Machine Hire:** Shall mean machine hire for equipment. Supplied at an hourly rate or at a fixed cost price at the rates specified in the Quotation Schedule or if no rates are specified, at the Contractor's current rates per hour.
- b. **Labour Services:** Services shall mean labour services supplied at an hourly rate or at a quoted fixed cost at the rates specified in the Quotation Schedule or if no rates specified, at the Contractor's current rates per hour.
- c. **Quotation Schedule:** Means the Quotation Schedule prepared by the Contractor providing prices of the labour services, materials and work to be provided by the Contractor. The prices contained in the Quotation Schedule are subject to variation/adjustment as is detailed in this Agreement. If there is any conflict between the provisions contained in the Quotation schedule and the terms contained herein then the provisions of the Quotation Schedule shall take precedence.

- d. **Short Form Agreement:** means the Short Form Agreement (if such an Agreement has been entered into between the parties for any works) prepared by the Contractor for the purposes of a specific Agreement for service between the Parties. The Short Form Agreement is to be read in addition to these terms of trade, if there is any conflict between the provisions in the Short Form Agreement and the terms contained herein then the provisions of the Short Form Agreement shall take precedence.
- e. **Work:** Means all construction, earthworks, stabilisation, design, consulting, labour services and all other work or services to be provided by the Contractor.
- f. **Materials:** Means all aggregates, binders, lime, cement, concrete, steel, timber, anchor hardware, pipes and other materials to be supplied by the Contractor.
- g. **Stabilised Materials:** Means all soils clays or other materials in situ (and/or blended with materials supplied by the Contractor) and then worked or stabilized by the Contractor with or without the other materials.
- h. **Resource Consents:** Means all necessary Resource Consents required by any local or Regional Authority to be obtained to undertake the work.
- i. **Confirmation of Acceptance of Terms:** Means confirmation from the Client that it accepts the rates/prices contained in the Quotation Schedule and those terms. Confirmation from the Client can be by way of written or oral advice or by the Client instructing the Contractor to establish "on site".

All the work to be provided shall be provided by the Contractor on the terms and conditions in this document.

3. Quotations and Price

- a. The Contractor shall quote a cost for work in its Quotation Schedule following instructions from the Client and the Client shall confirm the cost by confirmation of acceptance of terms. Quotations shall be valid for (30) thirty days but the Contractor may withdraw any Quotation before the Client has confirmed acceptance or if the work has not commenced within 60 days of the acceptance being given.
- b. No order by the Client after confirmation of acceptance of terms shall be cancelled without the consent of the Contractor, and in such cases the Client will be liable to pay the Contractor all costs and expenses incurred by the Contractor in fulfilling the order to the date of cancellation; and if materials cannot be cancelled or returned or used on another job then those materials shall be paid for at the agreed rate in the Quotation Schedule.
- c. The Quotation Schedule price may be increased if the Contractor suffers any cost increases which are beyond its control in the supply, production and delivery of the work (including increases in materials and a general wage agreement) between the date of the Quotation Schedule price and the supply of the work.
- d. The Quotation Schedule price may be increased if the Client varies or alters the nature of the specifications of or timing of the work to be undertaken by the Contractor.
- e. The Contractor agrees to pass on cost reductions to the Client that may result upon completion of supply.

4. Supply of Labour for Excavation or Removal or Preparation of Site

- a. The price of the services, excavation or removal of redundant materials or buildings in order to prepare the site for the work will be quoted by the Contractor as an estimate where excavation or removal is required. The final price shall be the invoice charged to the Client which may be varied or altered if the

Contractor provides evidence of:

- i. any cost increases outside of its control;
 - ii. deficiencies in information supplied by the Client;
 - iii. any delays caused by the Client or its agents where the Contractor has presented itself to do the work agreed, or where the Contractor discovers or encounters buried utilities (water pipes, power or utility lines, sewer or storm water pipes) or medium not previously known and where the Client has not notified the Contractor; or
 - iv. any rock, previously stabilised material, hazardous material, puggy or loose soil, reinforcing steel.
- b. In the event that after the work has commenced the Contractor becomes aware of any undisclosed items (of the nature detailed in clauses (a)(i) to (iv) above) the Contractor may at their sole discretion cease supply of the work and provide the Client with an estimate of costs for the additional supply and the Client has the option to pay for supply completed to the time of discovery and terminate the contract or accept the additional costs to complete the order including any damage to the Contractor's equipment as a result of unbound surfaces or below surface mediums.
 - c. The quotation and price of labour and parts for installation or removal and travelling time may also include subcontractors or agents used by the Contractor to undertake the work on behalf of the Contractor.

5. Delivery of Materials/Work

- a. Delivery of the materials to the site owned by the Client or under the care or responsibility of the Client shall constitute delivery. The Contractor will make every effort to ensure that the materials and work are supplied on time, but will not be responsible for any loss arising in any way from delays in delivery.
- b. Where the Contractor has performed part or all of the supply of materials and work at a time agreed by the Client but where delivery of the materials or the work

is delayed because of any act, omission or delay by the Client or where the Client has not rendered the site safe under the Health and Safety in Employment Regulations, the Contractor will require the Client to pay the costs incurred by the Contractor in not being able to carry out the supply. The Contractor may also charge stand by costs while the Client renders the site ready.

- c. Where the Contractor is not undertaking the design of the work then:
 - i. the Client shall be deemed to have assumed full responsibility for the supply of design specifications, and materials detailed in the Quotation Schedule and it shall be the sole responsibility of the Client that design and specifications are satisfactory for the purposes they are intended; and
 - ii. the Client will indemnify the Contractor against all liability or losses incurred or that may arise as a result of any deficiency or defect in respect of the designs or specifications.

6. Payment

- a. Payment to be made by deposit declared in the Quotation Schedule before work will begin and final payment is to be made in full without deduction or setoff according to the terms set out in the Quotation Schedule.
- b. If payment is not made in full by the due date, the Contractor is entitled to charge the Client interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by the Contractor's bank calculated from the due date of payment down to the actual date of payment, and the Contractor may at its option suspend the sale and secure the materials in its possession regardless of the term of this contract until the overdue amounts are paid in full.
- c. If at any time the Contractor reasonably deems the credit of the Client to be unsatisfactory, it may require the Client to provide at the Client's cost, security for payment and/or the Contractor may suspend performance of any of its obligations under this Contract until security is provided to the

Contractor's satisfaction and the Contractor may require the Client to pay all costs incurred as a result of suspension and re-commencement of work and supply of materials and re-establishment on site.

7. Risk & Ownership of Title

- a. Risk of any loss, damage or deterioration of or to the materials shall be borne by the Client from the time of delivery of the materials into the Client's care and control, and the Client shall be responsible for insuring the materials for all the risks.
- b. The Client agrees that the Contractor has legal and equitable title in the materials and work supplied by it until the Client pays in full without deduction or set off. This reservation of title and ownership is effective whether or not the materials have been altered from that supplied, mixed with other materials or fixed to a building or property. Where such materials are mixed and are severable but not identifiable or where it is impractical to remove the materials without incurring loss to an innocent third party, the Contractor is co-owner of the site or property in proportion to the contribution of value made by the materials and work to the value of the Client's building or property or in the alternative the Contractor can claim a charge on monies due from the owner of the property to the Client.
- c. In the alternative should the materials become mixed with other materials on the site controlled by the Client (but not owned) and it is not practicable to remove those materials and there are monies due from the owner of site to the Client then the Client will assign to the Contractor all its right (title and interest) in those monies to meet any amounts owned by the Client to the Contractor for work undertaken and materials supplied.
- d. The Client further agrees that it cannot sell property or part property in which the Contractor has title under clause (b), to any third party without the written permission of the Contractor and can only negotiate a sale by declaring the Contractor's reservation and value of title to the third party and receive any proceeds from sale as the fiduciary agent of the Contractor and hold such proceeds in a separate trust account and pay the Contractor for

the outstanding monies owed.

- e. In any event where materials remain unpaid by the Client, the Contractor has an unreserved right to enter the property of the Client or its agents during normal business hours and remove materials relating to the unpaid amount and the Client will not hold the Contractor responsible for any economic or consequential loss that the Client may suffer as a result, whether the materials are attached to other materials or building or property owned by the Client, or not.

8. Intellectual Property

- a. The Client agrees that where the Contractor supplies intellectual property, the ownership of such intellectual property shall always remain with the Contractor and the Client further agrees that it shall not use the intellectual property in any manner whatsoever whether in complete form or in any way adapting or altering without the prior written consent of the Contractor.
- b. Where the Contractor has followed plans, specifications and instructions being oral or written provided by the Client, the Client shall indemnify the Contractor against damages, costs and expenses in respect of which the Contractor may become liable by following such plans, specifications and instructions and including those arising from the infringement of patents, copyrights or trademarks by the Client.
- c. Should the Contractor supply intellectual property and any part of it is used by the Client without the Contractor's permission on any subsequent work undertaken by the Client then the Contractor shall be entitled damages in the amount of the contract value of the other work undertaken using the Contractor's intellectual property.

9. Variations

- a. Any variations regarding price or supply to that agreed in the Quotation Schedule that may be agreed between the parties during the period of supply shall be in writing and take precedence over that part of the Quotation Schedule affected. If the Contractor is

requested to undertake a variation without a price being agreed upon then the Client shall pay the Contractor's current rates for the work undertaken or materials used in the variation.

10. Warranty & Guarantees

- a. The warranty on materials supplied by the Contractor but not manufactured by the Contractor shall be the warranty of the original manufacturer, where such a warranty is able to be transferred.
- b. It shall be the sole responsibility of the Client that roading surfaces under the ownership, care or responsibility of the Client is of adequate strength to support loads including vibration, weight and depth checks relating to equipment and methods the Contractor will use in its work and the Client further agrees that it will not hold the Contractor liable in any way for damage to roading surfaces, footpaths, crossings or any other part of the road as a result of failure of the Client's responsibility in this regard.
- c. It shall be the sole responsibility of the Client to identify and accurately locate the position of any Telecom, electrical, gas, data, water, storm water or sewerage services or other hazards ("the Hazards"). Should the Client not clearly and accurately communicate the position of these Hazards in a format that can be interpreted by the Contractor then the Client shall indemnify the Contractor against all liability that may arise as a result of any damage to these Hazards or services.
- d. It shall be the sole responsibility of the Client to define all boundary and set out pegs, levels and level tolerances for roading surfaces and property sites under the ownership, care or responsibility of the Client and the Client further agrees to indemnify the Contractor against any liability it may have to any third party as a result of this information being incorrect.
- e. The Client shall agree not to hold the Contractor responsible for any ponding or puddling on any asphalt or concrete surface where the grade is less than 1 in 80.
- f. The Contractor warrants that (where possible) it will supply the materials as the description

- defined in the Quotation Schedule and Warranty and it will replace materials supplied under this Contract that are defective and make good any defect in workmanship for any work undertaken provided that the Client notifies the Contractor in writing of any defect within (30) thirty days of delivery or such other minimum period required by law, whichever is the lesser.
- g. The Contractor shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Client or any other person arising directly or indirectly from any breach of any of the Contractor's obligations arising under or in connection with the contract including delays in the delivery of materials or work to be undertaken or from any cancellation of the contract or from any negligence, misrepresentation or other act or omission on the part of the Contractor, its servants, agents or contractors.
- h. The Contractor shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lockout, act of God, fire, governmental regulations or directions, force majeure or any other reason outside of the Contractor's reasonable control. The occurrence of such an event shall not give the Client a right of cancellation of any contract.
- i. Notwithstanding anything herein before contained in this section 10 or contained elsewhere in the contract then the total and full liability of the Contractor whether in contract or pursuant to any cancellation of the contract or in act or otherwise however, in respect of all claims for loss, damage or injury arising from breach of any of the Contractor's obligations arising under or in connection with work to be undertaken or the materials to be supplied or from any negligence, misrepresentation or other act or omission on the part of the Contractor, its servants, agents or contractors then the total and full liability of the Contractor shall be linked at the Contractor's option, to the price of the materials, or replacement of the materials or the agreed price of the value of the work to be undertaken by the Contractor.
- j. The Client shall make the limitation of the Contractor's liability to the value of the work undertaken or materials supplied (clause i above) to the attention of and a contractual term with any third party it has a contractual relationship with in respect of the work to be undertaken or the materials to be supplied to the intent that the third party is bound by this provision. Should the Client fail to bind the third party with the Contractor's limitation of liability referred to in clause i above then it will indemnify the Contractor against all liability it may incur to any other party in contract or negligence or on any other grounds.
- k. It shall be the Client's obligation to obtain at the Client's sole cost all resource consents or any other required consents in respect of the work proposed, and to advise the Contractor of the terms and conditions of those consents so that the Contractor can comply with those consents in as far as the work is undertaken or materials supplied is by these consents. If the Client fails in its obligation to obtain all necessary consents or to provide details of those consents to the Contractor then the Client will indemnify the Contractor against all liability it may have to any Local or Government Authority or to any other third party.

11. Claims for Damaged or Defective Materials or Work

- a. The Contractor will not accept any claim by the Client for any reasons where the Client may be prejudiced by the defect or failure of the materials or work or the materials stabilised including economic loss, consequential loss or other form of loss whatsoever including but not limited to where:
- i. the defect or failure to the materials or stabilised materials is due to or resulting from damage or misuse, negligent maintenance or care or loading or trimming while the materials or stabilised materials are in the possession of the Client or failure to follow care instructions or the materials or stabilised materials have not been used for the purpose for which they were designed or the materials or stabilised materials are used by persons not technically competent with the design of the materials or stabilised materials.

- ii. the defect, or failure is due to defective materials, instructions or plans or design or specifications supplied by the Client.
 - iii. the defect or failure is due to non-operation of the materials due to the Client or the Clients' employees or agents not complying with employment laws, Health and Safety in Employment or Resource Consents any other laws of New Zealand.
 - iv. the defect or failure is caused by Client misinterpretation of oral or written instructions for care given by the Contractor or not in acceptance with accepted engineering design or practice.
 - v. the defect or failure is due to acts, defaults or omissions outside the control of the Contractor (force majeure).
- b. Where the Contractor elects to replace defective materials it will endeavour to replace the materials as soon as reasonably practicable and such substituted materials shall become subject to the provisions of this Agreement in the same manner as the materials for which they shall have been substituted. If the Contractor cannot make replacement within 48 hours of notification of the materials becoming defective, the Contractor will repair the materials and if repair is not practicable, will credit the Client the full payment that has been made for that part of the materials that are defective or damaged.
- c. If the Client does not comply with the above requirements, the Client will be deemed to have accepted the materials and the Contractor will not incur any liability whatsoever in relation to the materials.
- d. The Contractor may at its discretion, give credit for returned materials incorrectly ordered by the Client which are delivered to back to the Contractor within two (2) days at the Client's cost in the same condition and packaging in which they were dispatched, with a copy of the invoice. The Contractor may charge fifteen (15) percent of the cost of the materials as a handling and administration charge.
- e. The Client agrees that claims shall not be considered in respect of materials which:

- i. are not intact and in original condition;
- ii. have been abused or improperly stored or suffered damage or contaminated or have water damage while in the care or possession of the Client;
- iii. have been sold to the Client on a non-refundable basis;
- iv. are more than (2) two days after the date of delivery;
- v. in the case of discrepancies in order quantity or type of materials where the claim is not in writing within (3) three working days of receipt of the order; and
- vi. are lime or cement.

12. Grounds for Termination by the Contractor

- a. This Agreement may be terminated by the Contractor immediately on written notice to the Client, if an Event of Default of payments due to the Contractor by the Client occurs, and the Contractor may enter the premises of the Client where the materials are stored and remove them
- b. Default will also mean, if the Client:
 - i. fails to commence operations of the contract on or before commencement date or have the site ready for the commencement of the work as agreed;
 - ii. fails to comply with any quality or standards for the care of the materials issued by the Supplier;
 - iii. shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors;
 - A. Where the Client is a company, commit any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Contractor or if a Receiver is appointed in respect of all or any assets of the Contractor;
 - B. fails to have the necessary resource consents; and
 - C. fails to adequately locate all Hazards.

Termination of this agreement shall not relieve the Client of its obligations to pay all money owed by it to the Contractor on any account whatsoever, such money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement shall not relieve the Client from liability arising from any antecedent breach of the terms of this agreement.

Upon the termination of this agreement for any reason, all rights of the Client granted by this agreement shall terminate and the Client will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this agreement.

13. Consumer Guarantees Act 1993

- a. It is acknowledged that the provision of goods, services, materials or work to the Client from the Contractor is deemed to be for business purposes and these terms shall have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.
- b. The Client shall not, give or make any undertaking, assertion or representation in relation to the Materials or work to be undertaken to any other person or company without the prior approval in writing of the Contractor, and the Client shall indemnify the Contractor against any liability or cost incurred by the Contractor as a result of any breach by the Client of this provision.

14. Dispute and Arbitration

- a. In the event of any dispute between the Contractor and the Client arising out of this Agreement, the parties agree to attempt to resolve the dispute on a without prejudice basis, if after 14 days, the dispute is not resolved, the Client agrees to pay the undisputed part of the outstanding monies owed and such dispute shall be referred to an arbitrator, to be agreed between the parties and the arbitrator shall arbitrate in accordance with NZS3910 1998 (NZ Contractors Standard) or where the Client has not engaged a registered engineer, in accordance with NZS3915 2000 and upon failure to reach agreement

arbitration will be conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

15. Guarantor

- a. Where the Client is a company, trust, partnership or other non-individual entity the directors, trustees or persons in control as the case may be and also sign in their personal capacity and jointly and severally personally undertake as principal debtors to the Contractor for payment of any and all monies owed by the Client to the Contractor and indemnify the Contractor against non payment by the Client.

16. Authority

The person executing this Agreement on behalf of the Client warrants it has the authority to bind the Client with these terms

17. Acceptance

Please complete the following applies to the job quoted.
Detach and return with deposit (if required) to Rock Control Head Office, 61 Kennaway Road, Woolston, Christchurch.

To Rock Control,

I/we.....

accept on this date..... your quotation reference.....and conditions of the contract for work carried out at the following address:

- Permits or Resource Consents have been obtained (copies attached) Y/N
- Ownership as per the quotation name and address Y/N if not please specify
- The person signing this form is the person making or approving the payment Y/N
- I understand payment is due 20 days from the date of the invoice Y/N
- I wish to proceed with the following items (Please indicate Item Number(s) and/or Description as set out in the quotation)
- (if applicable) I have the following specific instructions:

Deposit Details (if applicable)

The required deposit of \$..... will be paid by (please circle one):

a) By Electronic payment of your deposit to the bank account of Rock Control Ltd:

ANZ: 06 0869 0560741 00

Please use the Project Name/Number as a reference for electronic payments and note in the above space the amount to be paid by cheque or direct credited.

I can be contacted on the following numbers:

Work:.....

Mobile:.....

Email:.....

Yours sincerely,

.....
Signature of person making or approving payment