

Townshend Cullen Associates – Terms & Conditions of Trade

1 Definitions

- 1.1 "TCA" shall mean Townshend Cullen Associates its successors and assigns or any person acting on behalf of and with the authority of Townshend Cullen Associates.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by TCA to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all Services supplied by TCA to the Client (and includes any advice or recommendations) and are as described on the invoices, quotation, work authorisation or any other forms as provided by TCA to the Client.
- 1.5 "Price" shall mean the price payable for the Services as agreed between TCA and the Client in accordance with clause 3 of this contract.

2 Acceptance

- 2.1 Any instructions received by TCA from the Client for the supply of Services and/or the Client's acceptance of Services supplied by TCA shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of TCA.
- 2.4 The Client shall give TCA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by TCA as a result of the Client's failure to comply with this clause.

3 Price And Payment

- 3.1 At TCA's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by TCA to the Client in respect of Services supplied; or
 - (b) TCA's current price at the date of delivery of the Goods according to TCA's current Price list; or
 - (c) TCA's quoted Price (subject to clause 3.2) which shall be binding upon TCA provided that the Client shall accept TCA's quotation in writing within thirty (30) days.
- 3.2 TCA reserves the right to change the Price in the event of a variation to TCA's quotation.
- 3.3 At TCA's sole discretion a deposit may be required.
- 3.4 At TCA's sole discretion:
 - (a) payment shall be due on delivery of the Services; or
 - (b) payment for certain approved Client's shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.5 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and TCA.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4 Delivery Of Services

- 4.1 Delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated address.
- 4.2 At TCA's sole discretion the costs of Delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then TCA shall be entitled to charge a reasonable fee for redelivery.
- 4.4 TCA shall not be liable for any loss or damage whatever due to failure by TCA to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of TCA.

5 Risk

- 5.1 If TCA retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.

6 Title

- 6.1 TCA and Client agree that ownership of the Services shall not pass until:
 - (a) the Client has paid TCA all amounts owing for the particular Services, and
 - (b) the Client has met all other obligations due by the Client to TCA in respect of all contracts between TCA and the Client.
- 6.2 Receipt by TCA 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 TCA's ownership or rights in respect of the Services shall continue.
- 6.3 It is further agreed that until such time as ownership of the Services shall pass from TCA to the Client TCA may give notice in writing to the Client to return the Services or any of them to TCA. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Services shall cease.

7 Client's Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel any contract with TCA or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by TCA and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

8 Error and Omissions

- 8.1 The Client shall inspect the Services on delivery and shall within two (2) days of delivery notify TCA of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford TCA 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.
- 8.2 For defective Services, which TCA has agreed in writing that the Client is entitled to reject, TCA's liability is limited to either (at TCA's discretion) replacing the Services or repairing the Services provided that the Client has complied with the provisions of clause 8.1.

9 Consumer Guarantees Act 1993

- 9.1 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 TCA to the Client.

10 Intellectual Property

- 10.1 Where TCA has designed, drawn or written Services for the Client, then the copyright in those designs and drawings and documents shall remain vested in TCA, and shall only be used by the Client at TCA's discretion.

- 10.2 The Client warrants that all designs or instructions to TCA will not cause TCA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TCA against any action taken by a third party against TCA in respect of any such infringement.

11 Default & Consequences Of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 11.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify TCA from and against all costs and disbursements incurred by TCA in pursuing the debt including legal costs on a solicitor and own client basis and TCA's collection agency costs.
- 11.3 Without prejudice to any other remedies TCA may have, if at any time the Client is in breach of any obligation (including those relating to payment), TCA may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. TCA will not be liable to the Client for any loss or damage the Client suffers because TCA has exercised its rights under this clause.
- 11.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 Without prejudice to TCA's other remedies at law TCA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TCA shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to TCA becomes overdue, or in TCA's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12 Security And Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which TCA may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to TCA or TCA's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that TCA (or TCA's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should TCA elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify TCA from and against all TCA's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint TCA or TCA's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13 Cancellation

- 13.1 TCA may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice TCA shall repay to the Client any sums paid in respect of the Price. TCA shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any loss incurred by TCA (including, but not limited to, any loss of profits) up to the time of cancellation.

14 Privacy Act 1993

- 14.1 The Client and the Guarantor/s (if separate to the Client) authorises TCA to:
 - (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - (b) disclose information about the Client, whether collected by TCA from the Client directly or obtained by TCA from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 14.2 Where the Client and/or Guarantors are an individual the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 14.3 The Client and/or Guarantors shall have the right to request TCA for a copy of the information about the Client and/or Guarantors retained by TCA and the right to request TCA to correct any incorrect information about the Client and/or Guarantors held by TCA.

15 General

- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 15.3 TCA shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TCA of these terms and conditions.
- 15.4 In the event of any breach of this contract by TCA the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 15.5 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 TCA.
- 15.6 TCA may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 TCA reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which TCA notifies the Client of such change.
- 15.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 15.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.10 The failure by TCA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect TCA's right to subsequently enforce that provision.