

## RECO - TERMS OF TRADE

### 1. DEFINITIONS

- 1.1. "RECO" shall mean **REGAN JOHN MCCORQUINDALE trading as RECO**, or any agents or employees thereof.
- 1.2. "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing or instructing Services to be provided from RECO. Where the Customer comprises more than one person, the obligations of the Customers shall be joint and several.
- 1.3. "Services" shall mean all services supplied to the Customer by RECO and as described in any invoice, quotation and/or any other document provided to the Customer by RECO and shall include any Equipment necessary to complete the Service.
- 1.4. "Disbursements" shall include the cost of any expense incurred on the Customer's behalf (for example, all testing products and samples, reasonable photography, training programmes, reproduction of drawings, diagrams, sketches and printing).
- 1.5. "Price" shall mean the cost of Services as determined by RECO. The Price is the cost of the Services exclusive of Goods and Services Tax (unless stated otherwise). GST will be stated on any invoice issued by RECO and is payable by the Customer to RECO.
- 1.6. "Equipment" shall mean all materials, machinery or other products used by RECO in supplying the Services.
- 1.7. "Premises" shall mean the property where the Customer has directed RECO to carry out the Services or the place for delivery for the Services.

### 2. ACCEPTANCE & CANCELLATION

- 2.1. Any instructions received by RECO from the Customer for the supply of the Services, or the acceptance of the Services provided by RECO shall constitute acceptance of the terms and conditions contained herein.
- 2.2. RECO retains the right to terminate any instructions received by the Customer for the provision of the Services if the information provided is false or misleading or if any issue arises as to the Customer's creditworthiness. In the event that an issue arises as to the Customer's creditworthiness, RECO may also, at their sole discretion, continue providing the Services upon payment in advance of the Services being supplied.
- 2.3. RECO may issue a notice of remedy to the Customer in the event that these terms of trade are breached by the Customer. If the breach given in the notice is not remedied by the Customer within 30 days then RECO may cancel, in whole or in part, any instructions received by the Customer for the supply of the Services immediately, without any liability, and without any prejudice to any other right it has in law or equity, by communicating the cancellation to the Customer in writing. RECO will not be liable for any loss or damage arising from the cancellation.
- 2.4. RECO may cancel, in whole or in part, any instructions received by the Customer for the supply of the Services immediately at any time, without any liability, and without any prejudice to any other right it has in law or equity, by communicating the cancellation to the Customer in writing for any substantial breach of these terms of trade. RECO will not be liable for any loss or damage arising from the cancellation.
- 2.5. In the event that RECO cancels any instructions (or part thereof) from the Customer, the Customer will remain liable for the full cost of any Services provided up to and including the date of cancellation.
- 2.6. The Customer may cancel any instructions given to RECO by the Customer by providing 14 days' notice in writing to RECO. The Customer will remain liable for the full cost of any Services provided up to and including the date of cancellation. The Customer will remain liable for the full cost of any loss or damage arising from the cancellation.

### 3. DEPOSIT

- 3.1. RECO reserves the right to charge a deposit for the Services. This deposit will be invoiced and payable in advance of the provision of the Services by RECO to the Customer.
- 3.2. RECO may require a deposit to cover a percentage of the Price of any Services before the Services are supplied to the Customer.
- 3.3. RECO reserves the right to withhold the supply of the Services until the deposit is received.

### 4. PRICE & PAYMENT

- 4.1. RECO may issue a quote to the Customer before work is undertaken. Any quotation issued remains valid for 30 days. RECO may withdraw that quotation at any time before the Customer accepts that quotation. The quotation is based on the costs and charges indicated to RECO at the day of quotation.
- 4.2. Any changes in costs arising from sources beyond the control of RECO, such as changes in the price charged by suppliers or for any other reason, is payable by the Customer. Factors beyond RECO's control include (but are not limited to) supply issues and price fluctuations as a result of a pandemic, act of God, global economic crisis, political tensions between trading countries and trade embargos.
- 4.3. RECO will invoice the Customer for the Price of the Services based on the Service actually supplied. The Customer acknowledges that there may be discrepancies from the quotations and that RECO shall provide reasonable explanation for the final charge in each invoice where the invoice is inconsistent with the quotation for any reason.
- 4.4. RECO reserves the right to invoice for the Services in a staged approach. An invoice may be issued at each stage of the Services being provided by RECO as determined by RECO.

- 4.5. RECO requires full payment of any issued invoice by no later than the 20<sup>th</sup> day of the following month from the date that the invoice, unless otherwise agreed to in writing.
- 4.6. RECO may transfer any overdue accounts owing by the Customer to a third party for the purpose of collection after notice is given to the Customer.
- 4.7. RECO may, at their sole discretion, allow for a payment schedule or payment arrangement to be implemented for the provision of the Services to a Customer. Such an arrangement shall be recorded in writing.
- 4.8. RECO reserves the right to recover from the Customer any expenses, disbursements and legal costs incurred by RECO due to the enforcements of any rights contained in these terms of trade including any reasonable solicitor's fees or debt collection agency fees.

## **5. VARIATION/WAIVER**

- 5.1. No variation or waiver of these terms of trade shall be valid, including any oral representations by RECO or a representative, which is inconsistent with these terms of trade unless the variation or waiver is in writing.

## **6. CUSTOMER'S RESPONSIBILITIES**

- 6.1. The Customer will ensure that all information provided to RECO is complete and accurate.
- 6.2. The Customer will update RECO when the Customer's information changes (for example, if the Customer's contact details or address for service changes).
- 6.3. The Customer will provide RECO and their contractors safe access on to, while attending, out of and around the Premises. The Customer will ensure that the Premises are free from hazards that may cause harm to RECO, their contractors or their equipment.
- 6.4. The Customer will be liable for any costs, expenses or losses reasonably incurred by RECO in repairing or replacing any equipment and/or to anyone else's property that is damaged due to hazards at the Premises.
- 6.5. The Customer will ensure that the Premises comply with all relevant Health and Safety requirements.
- 6.6. The Customer will use the Services provided by RECO for lawful purposes only.

## **7. RECO'S RESPONSIBILITIES**

- 7.1. RECO will use all reasonable skill and care in providing the Services to the Customer.
- 7.2. RECO will act in a competent and professional manner. RECO will only direct employees and contractors with the necessary qualifications and/or training and skills in providing the Services to the Customer.
- 7.3. RECO gives no guarantees, representations or warranties to the Customer other than those set out in writing from RECO or those required by law.

## **8. CUSTOMER INFORMATION**

- 8.1. The Customer authorises RECO to collect and hold such commercial, financial and personal information about the Customer as is necessary for assessing creditworthiness, trading status, obtaining credit statements, marketing any Services provided by RECO, or enforcing RECO' rights under these terms of trade.
- 8.2. The Customer authorises RECO to disclose the information in clause 8.1 to other parties for the purposes stated in clause 8.1.
- 8.3. The Customer acknowledges that any information given is true and correct, and that the Customer will notify RECO if the Customer's information changes. This notification shall be at least seven days in advance when possible, or as soon as practicable in all other circumstances.
- 8.4. If the Customer is a natural person then the authority given under clause 8 shall constitute sufficient authority for the purposes of the Privacy Act 1993. The Customer also acknowledges that they have the right to access that information and request corrections to it.

## **9. CLAIMS AS TO SERVICES**

- 9.1. The Customer shall inspect all Services supplied upon supply of the Services. The Customer will advise RECO in writing within 14 days of the Services being supplied of any defect, shortage in quantity, damage, or failure to comply with description or sample.
- 9.2. The Customer will provide RECO with an opportunity to inspect the Services within a reasonable timeframe following receipt of the notice under clause 9 and before any use is made of the Services supplied.
- 9.3. RECO will take all reasonable steps to remedy any defect, shortage in quantity, damage, or failure to comply with description or sample from any Service provided (where notice of such is sufficiently provided). RECO shall be responsible for any reasonable costs associated in remedying the issue where the issue has resulted directly from RECO' actions. RECO reserves the right to charge the Customer any additional sums where further costs are incurred in remedying the issue. RECO shall make the Customer aware of such additional costs and the reasons for the additional costs prior to incurring such costs.
- 9.4. In the event that the Customer does not comply with clause 9, the Services supplied by RECO will be conclusively presumed to be in accordance with the agreement and free from any defect or damage which would be apparent on a reasonable examination of the Services. The Customer will be deemed to have accepted the Services and have waived any and all claims arising from any unidentified defect(s) in the Services.

## **10. DISPUTES**

- 10.1. RECO will not consider any dispute regarding the Services unless the issue with the Services was raised in accordance with clause 9.
- 10.2. The above clause 9 applies without prejudice to RECO, who may claim a dispute against the Customer, at any time, by giving the Customer notice in writing specifying the nature of the dispute.
- 10.3. If RECO or the Customer have been notified of a dispute, both parties will endeavour, in good faith, to resolve the dispute referred to in the notice, by using informal dispute resolution techniques.
- 10.4. If the parties do not agree on a dispute resolution technique within 14 days after the date of notice of a dispute was given, the dispute is to be mediated according to the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution) and the Chair of LEADR (or chair's nominee) will select the mediator and determine the mediator's remuneration.
- 10.5. The parties agree that pending final resolution of any dispute hereunder, neither of them shall make any press release, public announcement or statements concerning the subject matter of the dispute to any person or organisation (save as expressly or by implication authorised herein).

## **11. RISK & LOSS**

- 11.1. All risk in the Services shall pass to the Customer upon delivery or confirmation of completion of the Service. Any loss arising from theft, destruction or damage from whatever cause shall be borne by the Customer.

## **12. LIABILITY**

- 12.1. In New Zealand, the Consumer Guarantees Act 1993, the Personal Property Securities Act 1999, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon RECO which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on RECO, RECO's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2. Except as otherwise provided by clause 12, RECO, any and all of its suppliers, vendors, service providers, and all other persons or business associated directly or indirectly with RECO shall not be liable for:
  - 12.2.1. Any loss or damage of any kind whatsoever including consequential, indirect or special loss and personal injury, whether suffered or incurred by the Customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Services provided by RECO to the Customer. For the sake of clarity, this includes but is not limited to loss and damage caused by: failure, abuse, lack of maintenance, unintended use, unqualified use, unauthorised modifications, delay and/or over extended use of the Services; and
  - 12.2.2. The Customer shall indemnify RECO against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of RECO or otherwise, brought by any person in connection with any matter, act, omission, or error by RECO, its agents or employees in connection with the Services.
- 12.3. In the event that RECO is ever liable, to the Customer or any other person, then the liability of RECO in all cases is limited to the Price of the Services supplied by RECO.

## **13. COMPLETION TIMEFRAME**

- 13.1. RECO will work within a reasonable timeframe and will endeavour to meet any target date which the Customer makes known to RECO.
- 13.2. RECO will not be liable for any delay or damage caused, directly or indirectly, by weather conditions, labour disputes, strikes, accidents, fire, and/or failure of manufacturers to deliver or any other events beyond the reasonable control of RECO.
- 13.3. Should it be necessary for RECO to work outside of ordinary working hours to meet the completion date as set by the Customer, the Customer shall be liable for any extra costs incurred in association with this. These costs will be invoiced to the Customer.

## **14. CONSENTS, PLANS & SPECIFICATIONS**

- 14.1. The Customer is responsible for obtaining any consent or other authority necessary for the Services to be carried out, and will provide proof of that to RECO upon request.
- 14.2. RECO shall be entitled to rely on the accuracy of any information supplied by the Customer. RECO shall not be obliged to verify any of the provided information,
- 14.3. RECO shall bear no responsibility for any Services supplied in reliance on and compliance with those plans, specifications and other information.

## **15. CONSUMER GUARANTEES ACT**

- 15.1. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires the Services from RECO for the purposes of a business in terms of section 2 and 43 of that Act.

## **16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

- 16.1. If the Customer is a company, other entity (whether incorporated or not) or trust, the director(s), agent(s) or trustee(s) accepting these terms, in consideration for RECO agreeing to supply the Services to the Customer, also accept these terms in their personal capacity and jointly and severally personally guarantee and undertake to RECO the payment of any and all other monies now or hereafter owed by the Customer to RECO.
- 16.2. As the natural person engaging RECO (whether on behalf of another entity or not), the natural person acknowledges that they are authorised to accept these terms of trade on behalf of the Customer.
- 16.3. Any personal guarantee made by any party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these terms of trade. The guarantors and Customer shall be jointly and severally liable under the terms and conditions of these terms of trade.

#### **17. DEFAULT**

- 17.1. Without prejudice to any other rights or remedies that RECO may have against the Customer, the Customer agrees that in the event of default in payment by the Customer, then the Customer will pay on demand:
  - 17.1.1. All costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by RECO in recovering any amounts payable by the Customer to RECO;
  - 17.1.2. Overdue payments shall attract interest at the rate of 2.5% per month calculated daily and compounding on the 20<sup>th</sup> day of each month with such a rate applying after, as well as before, any judgment; and
  - 17.1.3. A monthly administration fee of no more than fifty dollars (\$50.00) by way of damages payable on the last day of each month in which the Customer is in default.
- 17.2. RECO may, at their discretion, stop further performance of Services require payment in cash before any further performance of Services, or terminate any instructions received from the Customer for the performance of Services, without notice to the Customer upon any of the following:
  - 17.2.1. The Customer defaults in payment due under these terms of trade;
  - 17.2.2. The Customer is insolvent or take any proceedings to reschedule any indebtedness;
  - 17.2.3. In the opinion of RECO the Customer is unable to pay their indebtedness as it falls due;
  - 17.2.4. The Customer has a receiver or manager appointed.
- 17.3. Any failure or delay by RECO in exercising or enforcing any right they have under these terms of trade will not operate as a waiver of their rights to exercise or enforce such rights or any rights in the future.

#### **17.4. CUSTOMER'S DISCLAIMER**

- 17.5. The Customer hereby disclaims any right to rescind, or cancel any contract with RECO or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by RECO and the Customer acknowledges that the Services are sought and supplied relying solely upon the Customer's skill and judgement.

#### **17.6. GENERAL**

- 17.7. 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.
- 17.8. 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.
- 17.9. RECO 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 RECO notifies the Customer of such change. The most recent version of RECO can be found on RECO's main website.
- 17.10. 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.
- 17.11. The failure by RECO to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RECO' right to subsequently enforce that provision.
- 17.12. RECO may assign, sub-contract or transfer all or any part of its rights or obligations under these terms of trade without the Customer's consent. For the avoidance of doubt, the Customer cannot assign or transfer all or any part of their rights or obligations under these terms of trade.
- 17.13. No assignee, sub-contractor or transferee has the authority to agree to any variation of these terms of trade on behalf of RECO.
- 17.14. The termination of these Terms of Trade, for any reason, will not limit, in any way, the obligations and liabilities incurred by the Customer under these Terms of Trade.

<p>Name of Client (entity or person):</p> <p>Date of Birth (if individual):</p> <p>Name of company representative(s):</p> <p>Postal Address:</p> <p>Address for Service:</p> <p>Contact telephone:</p> <p>Email:</p>	<p><b>I declare that I am authorised to and do accept RECO' Terms of Trade and that these Terms of Trade constitute a valid a valid agreement</b></p> <p><b>x</b> _____ Signature of Client(s) (or representative of the Client(s))</p> <p>Date: _____</p>
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