

# CARGO CONTROL LIMITED (CCL)

## GENERAL TERMS AND CONDITIONS

### 1. Application of Terms

- 1.1 These terms apply to all contracts for the supply of services (**Services**) by CCL to the client from time to time.
- 1.2 The client acknowledges that these terms apply to the exclusion of any other terms or conditions of trade of the client. No modifications, alterations or additions of these terms of contract shall form any part of the contract between CCL and the client unless expressly accepted by CCL in writing.

### 2. Tenders, Quotes and Estimates

- 2.1 Unless otherwise agreed in writing, any tender, quotation or estimate from CCL is valid for a period of 1 calendar month only from the date of issue, provided that CCL has not previously withdrawn it by written notice to the client.
- 2.2 Any tender, quotation or estimate is based on the instructions and the information provided by the client. CCL reserves the right to amend any tender, quotation or estimate to cover any increase in cost which may arise as a result of additional instructions or information or as a result of any error or variation in the instructions or information provided by the client.

### 3. Price

- 3.1 Unless expressly stated otherwise, all prices are in New Zealand dollars and exclusive of goods and services tax (**GST**), and any other governmental duty or tax which is applicable and which shall be charged in addition at the rate and in the manner prescribed by law from time to time.
- 3.2 CCL reserves the right to amend the price to take account for any variations in the Services as a result of additional information or a request by the client.
- 3.3 If any unforeseen problems or expenditure arise in the course of carrying out any of the Services, CCL shall be entitled to make additional charges to cover additional time and cost necessarily incurred to complete this Service.

### 4. Payment

- 4.1 The client will pay the price for the Services (without deduction or setoff) to CCL not later than 30 days after the invoice date for the Services or within such period as may have been agreed in writing by CCL (**Due Date**).
- 4.2 If payment is not received on the Due Date, CCL may charge interest at a rate of 7% per annum above the Official Cash Rate of the Reserve Bank of New Zealand applicable during the period of non-payment (calculated on a daily basis) on all amounts outstanding from the Due Date to the date CCL received payment.
- 4.3 The client shall not be entitled to retain or defer payment of any sums to CCL on account of any dispute, cross claim or set-off which it may allege against CCL.
- 4.4 In the event of any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the client, the CCL shall be entitled to suspend or terminate all future performance of its Services forthwith and without liability.

### 5. Timing

- 5.1 The times or dates named or accepted by CCL for the supply of Services are given in good faith but are an estimate only.
- 5.2 CCL will endeavour to carry out the Services within the agreed time, and if no time is agreed, within a reasonable time. CCL is not liable for any loss (including without limitation indirect or consequential losses), damage (including without limitation liquidated damages), expense or injury resulting from delay in completion of the Services.

### 6. Reports

- 6.1 Any reports or certificates on products/goods inspected by CCL only relate to those particular products/goods actually inspected by CCL. Such reports and/or certificates do not extend to other products/goods which have not been inspected by CCL. CCL shall only be required to adopt standard industry recommended procedures when performing inspections, and preparing reports/certificates for the client. The client must specify in writing to CCL if it requires CCL to use procedures that are additional or different to standard industry recommended procedures.

### 7. Testing

- 7.1 If the Services accepted by CCL necessitate the analysis of a sample by CCL or any third party, CCL provides the results of the analysis to the client strictly on the basis that is not responsible for accuracy of the analysis. The client acknowledges that CCL has no obligation to verify or confirm the accuracy of a sample analysis and that CCL is not responsible for the accuracy of any analysis or results.

### 8. Client's Obligations

- 8.1 The client must: (a) ensure that the instructions to CCL and sufficient information are given in due time to enable the required Services to be performed effectively; (b) procure all necessary access for CCL's representatives to enable the required Services to be performed effectively; (c) ensure that all necessary measures are taken for safety and security of working conditions, sites, and installations during the performance of Services and will not rely in this respect on CCL's advice whether requested or not; (d) take all necessary steps to eliminate or remedy any obstruction to or interruptions in the performance of the required Services; and (e) inform CCL in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poison.

### 9. Default/Termination

- 9.1 Without prejudice to CCL's rights or remedies under these terms or at law, CCL may immediately terminate any and all contracts and cease to provide Services if the client: (a) fails to pay any amount owing to CCL under any contract; (b) fails to comply with the terms of any contract between CCL and the client, where that failure is not remedied to CCL's satisfaction within 5 days after CCL notifies the client of such non compliance; (c) an event occurs which in CCL's opinion might affect the client's ability to meet its obligations

under its contract with CCL including (without limitation) if the client: (i) fails to pay its debts when due; (ii) ceases or threatens to cease to carry on its business or a receiver or administrator is appointed over its assets or any step is taken for its liquidation; or (iii) becomes insolvent or commits an act of bankruptcy. Upon termination of CCL's contract with the client, the client shall pay all amounts owing under all contracts with CCL upon demand.

## **10. Liability**

- 10.1 Except to the extent that CCL is proven to be negligent (for which CCL's liability is limited under these terms), CCL (including its agents and representatives) is not liable whether in contract or tort or otherwise for any loss or damage suffered or incurred by the client or any other person due to any action or omission by CCL (including its agents and representatives).
- 10.2 If CCL is found liable for any reason (including without limitation for negligence), the liability of CCL in respect of any claim, loss, damage or expense of whatsoever nature and howsoever arising will in no circumstance exceed the total aggregate sum equal to 10 times the fee payable (excluding GST and costs) for the specific Service to which the claim relates and which Service specifically gives rise to the claim. Where the fee or commission payable relates to a number of services and a claim arises in respect of one of those services, a fee or commission shall be apportioned for the purposes of this term by reference to the estimated time involved in the performance of each service.
- 10.3 CCL will not in any circumstances whatsoever be liable for any claims of indirect or consequential loss, including (without limitation) loss of profit, future business, loss of production and cancellation of contracts entered into by the client.
- 10.4 Notwithstanding anything to the contrary, CCL shall be discharged from all liability (including negligence) to the client for all claims unless a claim is notified to CCL within 2 months: (a) after the date of the performance by CCL of the service relating to the claim; or (b) in the event of an alleged non-performance, within 2 months of the date when such service should have been completed.
- 10.5 All warranties, descriptions, representations or conditions, whether implied by law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law.

## **11. Indemnity and Costs**

- 11.1 The client irrevocably indemnifies CCL from and against all loss, costs, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) CCL incurs and all claims, demands and other proceedings brought by any person against CCL, arising from (a) the client's failure to comply with the terms of any contract with CCL or with any legislation, regulation or bylaw; or (b) any act, omission or negligence committed by the client or by any person for whom the client is responsible.
- 11.2 The client will pay all CCL's costs and expenses (including legal costs and expenses incurred on a solicitor/own client basis) incurred in the enforcement of CCL's rights or remedies under these terms.

## **12. Health and Safety**

- 12.1 The client shall be responsible to ensure that all appropriate safety measures and legislation are observed when the Services are provided by CCL.
- 12.2 Where the client knows or suspects that any substance, equipment, containment vessel or procedure it is providing, making available or requesting may give rise to a hazard of an unusual nature, the client will make CCL aware in writing of the nature of that hazard before arranging for the delivery (or collection) of material to CCL or before exposing any CCL employee, agent or subcontractor to the materials. CCL shall rely on the supply of such information from the client in order to satisfy its obligations under relevant health and safety requirements.

## **13. Force Majeure**

- 13.1 If the supply of Services by CCL is prevented or hindered by reason of any cause beyond CCL's control, which for the avoidance of doubt and without prejudice to the generality of the foregoing, shall include government action, war, riot, civil commotion, fire, flood, epidemic, labour disputes, strikes or lock-outs, shortage of labour, materials or utilities or delays by subcontractors, restraints or delays affecting shipping or carriers, currency restrictions and acts of God, CCL may suspend the performance or cancel the contract of a Service immediately by notice in writing to the client so far as it relates to the Services not then supplied or work not then done. Such suspension or cancellation shall not give rise to any claims by the client. The client shall remain liable to pay for the Services performed prior to the date of such suspension or cancellation.

## **14. Jurisdiction**

- 14.1 This contract is governed by New Zealand law and is to be construed in all respects as a New Zealand contract. The client submits to the non-exclusive jurisdiction of the courts of New Zealand. All disputes will be heard in Auckland, New Zealand.

## **15. General**

- 15.1 Any illegality, invalidity or unenforceability of any clause or part of these terms shall not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable, the parties agree that they shall substitute provisions in a form as similar to the relevant provision as is possible without rendering such terms illegal, invalid or unenforceable.
- 15.2 If there is any ambiguity or inconsistency in the interpretation or application of these terms such ambiguity or inconsistency is to be interpreted in favour of CCL, irrespective of whether CCL is relying on the term in question.
- 15.3 CCL may delegate or subcontract any part of the Services.
- 15.4 Unless otherwise expressly agreed by CCL in writing, these terms constitute the entire agreement between CCL and the client for the supply of the contract works.
- 15.5 Every officer, employee, agent and subcontractor of CCL shall have the benefit of any exclusion or limitation of liability under these terms and the benefit of any indemnity contained in these terms.