

# THE CONNECT GROUP LIMITED – TERMS AND CONDITIONS



The supply of any credit under our Credit Application Form, and/or supply of goods (“the Goods”) and services (“the Services”) to you (referred to as “you” or “your”) by The Connect Group Limited (referred to as “us” or “our” or “we” in this Agreement) in return for payment of the price for those Goods and Services is as set out in the quote provided to you (“the Quote”) and according to these Terms and Conditions. Acceptance by you of our Quote, either verbally or in writing, or acceptance of delivery or receipt of any Goods or Services, will (notwithstanding any statement to the contrary by you or your employees or agents) constitute acceptance of both our Quote and these Terms and Conditions. If there is more than one of you, liability is joint and several.

## Interpretation and Definitions

1. In these Terms and Conditions:-
  - a. Words using the singular also include the plural and vice versa where the context requires.
  - b. The headings are for convenience only and do not affect the interpretation of these Terms and Conditions.
2. In these Terms and Conditions:-

“Act of Insolvency” means that any of the following events occurs in relation to us or you:-

  - a. It becomes bankrupt; or
  - b. It is placed in liquidation or voluntary administration; or
  - c. A Receiver or Statutory Manager is appointed in respect of it,

and the Assignee, Liquidator, Voluntary Administrator, Receiver or Statutory Manager fails within ten (10) working days to make arrangements satisfactory to the other party for the performance of its obligations under these Terms and Conditions.

“Goods” means goods supplied by us to you.  
“Quote” means the quote provided by us to you.  
“Services” means services supplied by us to you.  
“Us” or “Our” or “We” means The Connect Group Limited.

## Quotations

3. Any Quote made to you will be valid for 30 days (unless specified differently on the quotation) and will lapse thereafter, unless we withdraw it earlier by written notice to you.
4. Clerical errors or omissions, whether in computation or otherwise in the Quote or invoice shall be subject to correction.
5. If you accept a quote, but subsequently cancel it before work commences, then without prejudice to our rights at law to claim damages, you agree to pay us \$1,500 plus GST for the cost of scoping and preparing the quote, plus any third party costs incurred, including but not limited to engineering costs.
6. A non-refundable deposit of 25% is payable to us by you upon acceptance of any quote.
7. All prices exclude GST, and also exclude any other applicable taxes and duties and insurance/freight/delivery/handling charges not expressly included in the price. You agree to pay these items (as applicable) in addition to the price, whether they are imposed before or after your order.
8. We shall be deemed to have submitted our quotation having due regard to the prices of all materials and services at the date of the quotation. Any increases or additional costs whether in the Goods or the Services or the prices of materials becoming effective after 30 days of the date of the Quote and before the completion of the work set out in the Quote shall be added to the final price payable by you.

## Payments / Construction Contracts Act 2002

9. The parties acknowledge that all provisions of the Construction Contracts Act 2002 (“the Act”) apply to this contract except where validly modified by the terms of this contract.
10. The number of payments under this contract, the interval between those payments, the period to which each of those payments covers and the amount of each of those payments, are all at our complete discretion. For the avoidance of doubt, there is no limit on the number of progress payments payable by you to us. We may serve a payment claim on the same day or immediately after service of the previous payment claim. We may serve a payment claim on you in respect of work carried out for you at any time whether or not the project the work relates to is completed, and without any interval between payment claims.
11. A payment under this contract becomes due and payable either:
  - a. in cash (in full) prior to our provision of services; or
  - b. if we have agreed in writing to allow you credit (after you have completed our Credit Application Form and we have accepted the same), on the 20<sup>th</sup> of the month following the date of the payment claim; (“the date for payment”).

12. We can impose a credit limit on you (or refuse to allow you any credit) at any time and alter it at our sole discretion.
13. If you intend to pay less than the amount of our payment claim, you must serve a payment schedule on us within 7 days of the date of our payment claim. The payment schedule must identify the payment claim to which it relates, advise us of the scheduled amount that you will pay us for that payment claim, show how you have calculated the scheduled amount to be paid and give reasons for why part of our claim is not being paid.
14. On or before the due date for payment, you must pay us the amount shown in the payment schedule. If you have not served a payment schedule on us in accordance with clause 13 above, you must pay us the full amount of our payment claim on or before the due date for payment.
15. If part of our claim is not paid, we may claim for that part in a future payment claim if we consider the reasons given in the payment schedule for that part not being paid are no longer applicable.
16. You irrevocably consent to and authorise us to serve any notice or any other document required to be served on, or given to, you under the Act (including any payment claims) by email or other means of electronic communication.
17. Unless permitted by the Act, you must not withhold payment or make any deductions of any nature whether by way of set off (legal, equitable or otherwise), counterclaim or otherwise from any amount you owes us.
18. If you do not pay any monies owed to us (“the unpaid monies”) by the due date, we may charge penalty interest at a rate of 2.5% per calendar month calculated on a daily basis on the unpaid monies from the date of default until payment in full is made. Any default in payment shall make all monies owed by you to us immediately due and we may withhold delivery of Goods and/or provision of Services until you provide payment of all money payable by you to us.
19. We may withhold providing any compliance documentation until the unpaid monies are paid in full.
20. If you commit an Act of Insolvency, without prejudice to any other rights or remedies, we may, by written notice, terminate these Terms and Conditions. You will be liable to pay us for the value of any work actually and properly completed at the date of such termination, including any variations as appropriate.

## Liability for Costs

21. Any expenses, costs or disbursements, including debt collection agency fees and legal fees (on a solicitor/client basis), incurred by us in registering any security for your obligations, and/or recovery or attempted recovery of any outstanding monies and/or the enforcement of these Terms and Conditions or the Security Interest contained in these Terms and Conditions shall be recoverable from you.
22. Interest at the rate of 2.5% per calendar month will accrue on any judgment sum made by a Court or Tribunal in relation to the unpaid monies or any part thereof, and will continue to accrue on any of the costs set out in clause 21.

## Delivery and Risk

23. Risk in any of the Goods supplied to you will pass to you on delivery. Delivery is deemed to be effected upon delivery of the Goods to your premises or upon collection of the Goods by or on behalf of you.
24. It is your responsibility to arrange Contract Works insurance for all work undertaken by us. The policy should be in joint names with us and our subcontractors noted as insured parties and is required to include cover for existing structures where applicable. The excess on this policy will be your responsibility unless the damage is caused by our negligence. The excess payable under the policy must not be more than \$2,000.
25. If any of the Goods are damaged or destroyed prior to property in them passing to you, we are entitled, without prejudice to any of our other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods whether or not the price has become payable under these terms and conditions. The production of these terms and conditions by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
26. We shall not be responsible for any delay in the delivery of Goods or the provision of Services and you shall not be entitled to cancel orders because of any such delay. Any

date or time stated for dispatch is an estimate only and not to be treated as a condition of sale.

### Security Interest

27. Ownership of all the Goods supplied to you by us will not pass on delivery but will remain with us until we have received total payment in cleared funds of all monies owing by you to us (whether relating to those Goods, the supply of services or to any other personal property supplied). We hold a Security Interest in all Goods supplied to you for payment of those monies.
28. Until all monies due to us are paid by you, you agree to act as a fiduciary of us and that you will:
- Not sell, charge or part with possession of the Goods, otherwise than for their full value in the ordinary course of business;
  - Not alter, obliterate, or deface the Goods and will not alter, obliterate, deface, cover up, or remove any identity mark indicating that the Goods are our property.
  - Store the Goods in such manner that they are clearly identifiable as our property and keep separate records of the Goods;
  - Hold the proceeds of the resale of the Goods in trust for us, in a separate and identifiable manner.
29. At our request, you will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that we may require from time to time to give effect to these Terms and Conditions, including without limitation doing all such things as we may require to ensure that the Security Interest created under these Terms and Conditions constitutes a perfected Security Interest over the Goods. This includes, but is not limited to, providing any information we request to complete a financing statement or a financing change statement for the Personal Property Securities Register.
30. Where you are in default, you agree to us entering the place where the Goods are located, or where we reasonably believe that the Goods are located, and taking possession of and selling the Goods even if we do not have priority over other persons having a Security Interest in the Goods. Sections 108, 109 and 120(1) of the Personal Property Securities Act 1999 do not apply to the extent that they are inconsistent with this clause.
31. You waive any right to receive a verification statement under the Personal Property Securities Act 1999.
32. Nothing in section 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 shall apply to these Terms and Conditions.
33. Your rights as a debtor under sections 116, 120(2), 121, 125-127, 129, and 131 of the Personal Property Securities Act 1999 shall not apply to these terms and conditions.
34. We shall be entitled at any stage during the completion of work for you to request such security or additional security as we shall in our sole discretion think fit and we shall also be entitled to withhold supply of goods or credit arrangements until such security or additional security shall be obtained.
35. We may issue proceedings to recover payment for the Goods notwithstanding that ownership of the Goods may not have passed to you.

### Exclusion of liability

36. If you are in trade and are acquiring the Goods or Services for business purposes, the guarantees under the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.
37. Unless you have rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited, there are no warranties express or implied. This includes implied warranties as to merchantability and fitness for a particular purpose.
38. Once you have paid us for the Goods, we will pass on to you the benefit of any manufacturer's warranty that applies to the Goods, without being directly liable to you under any such warranty. The manufacturer will normally supply a warranty with the Goods which may or may not include free onsite support, or free labour, for part or whole of the warranty period.

### Limitation of Liability

39. You agree to notify us in writing as soon as you identify any damage or defect in the Goods or Service that we supply you, giving us full details.
40. We will not be responsible for any damage or defect where you or your associated parties, are responsible for having caused it.
41. Our liability to you, subject to any statutory right you may have which cannot be excluded, is limited to the remedy or

refund under clause 42. We shall not be liable to you for any special, direct, indirect or consequential losses or damages, including any loss whatsoever and howsoever arising out of our supply of Goods and/or Services to you, whether arising in contract, equity, tort (including negligence), or on any other legal basis.

42. We shall not be liable to you for any loss or damage arising from any delay or failure to perform our obligations due to a matter beyond our control.
43. Your sole remedy against us shall be limited to breach of contract and the extent of any such liability shall be limited as follows:
- If the breach relates to Goods the extent of any such liability shall be limited, at our option, to our repair or replacement of the Goods, or payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods.
  - If the breach relates to Services the extent of any such liability shall be limited, at our option, to supplying the Services again; or payment of the cost of having the services supplied again. We will not, in any case, be liable for any other losses or damages whether general, exemplary, punitive, direct, indirect or consequential, including loss of business profits whether arising in contract, equity, tort (including negligence), or on any other legal basis.
  - For the avoidance of doubt, we must be given the first right to repair or replace the Goods or Services and we will not be responsible for any costs where you have asked someone else to provide repairs or replacements, where we have not first approved this in writing.
44. No action may be brought against us unless notice of such claim is given to us within five working days of delivery of the Goods or provision of the Services. We shall be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of the date of delivery of the Goods or provision of the Services.

### Health and Safety at Work Act 2015

45. The parties acknowledge that they both have duties under the Health and Safety at Work Act 2015, which requires them to identify risks and take steps to eliminate, isolate or minimize those risks. Where we work at your premises (or premises under your control), you will be responsible for:
- Supplying an appropriate working area for the works to take place at the premises;
  - Advising us of any hazards at the premises, and taking all steps required to ensure that the premises is a safe working environment for the purposes of the Health and Safety at Work Act 2015;
  - Advising us of any hazards and site-specific requirements for the area where the work is performed, including requirements imposed by a third party (e.g. a head contractor);
  - Taking all steps reasonably required by us to ensure that the working environment is safe and healthy.

### Disputes

46. If either party notifies the other in writing of a dispute relating to these Terms and Conditions,
- the parties must endeavour to resolve the dispute in good faith. The parties may agree to use a Mediator.
  - Disputes may be dealt with by adjudication as provided for in the Construction Contracts Act 2002.
  - If any dispute cannot be resolved in accordance with Clause 44(a), it must be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.
  - The dispute must be referred to a sole Arbitrator agreed to by the parties. If the parties cannot agree on the sole Arbitrator, then either party may request the appointment of a sole Arbitrator nominated by the Registrar of the Building Disputes Tribunal (NZ) Limited.
- Nothing in this clause prevents either party from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

### General Provisions

47. These terms apply to all transactions where we supply Goods or Services to you. If there is any inconsistency between these terms and the Quote provided by us, then the Quote shall prevail unless otherwise agreed by us in writing. If there is any inconsistency between these terms and any order submitted by you or any other arrangement

- with us (except for our quote), then these terms prevail unless otherwise agreed by us in writing.
48. If any provision of these terms and conditions is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining provisions.
49. This contract and its terms are governed by, and shall be construed in accordance with, the laws of New Zealand. Both parties submit to the exclusive jurisdiction of the New Zealand Courts.
50. We may review and change these terms and conditions at any time and from time to time. Any such change will take effect from the date on which we notify you of the change.

- complete the Services or deliver the Goods as soon as is reasonably practicable; or
- iii. complete the Services or supply Goods within a certain time frame or by a certain date;

must make a fair and reasonable allowance for delays that are wholly or partially attributable to the Covid-19 global pandemic, including (without limitation):

#### Specific terms – Inspection and consultancy services

51. In addition to the above terms and conditions of this contract, the following terms and conditions (“the specific terms for inspection and consultancy services”) apply to this contract where we agree to provide any inspection and consultancy services to you:

- a. **Information:** You must provide, as soon as possible and free of cost, all information reasonably required to enable us to perform the inspection and consultancy Services. Unless verification of the information is specifically part of the inspection and consultancy Services to be provided to you, we will assume and rely on the accuracy and completeness of all information provided by you or obtained by us from public or other reasonable source.
- b. **Advice:** All advice, information and materials provided by us (“Advice”) are confidential and are prepared solely for you for the purpose stated in our quotation. You must not use the Advice for any other purpose nor disclose it to any third party without our prior written consent. We will have no liability to any unauthorised third party using or relying on any of the Advice. You agree not to rely on any advice or information provided orally by us unless and until confirmed in writing by us and accept that unless the confirmation occurs, any reliance would be unreasonable and we will accordingly have no liability for the oral advice or information.
- c. **Intellectual Property:** We will own all intellectual property rights, including copyright, and all other property rights in all documents and other materials of any nature (including in electronic form) prepared by us in performing the Services (“the Services Materials”). You will be entitled to use (including copying) the Services Materials only as reasonably required for the purpose stated in the quotation provided you have complied with the terms of this contract, including payment of fees. If this contract is terminated before completion of the Services and where payment to us remains outstanding, your entitlement to use the Services Materials will apply to completed Services Materials only. Any partially completed Services Materials must not be used without our prior written consent.
- d. **Indemnity:** You agree to indemnify us against any claim, damage, loss or expense incurred by us as a result of your breach of your obligations set out above including clauses 49(a) to (c) concerning the unauthorised use or disclosure of our advice, information or materials.

- iv. any requirements imposed by statute, regulation, or bylaws of central or local Government; or
- v. the unavailability or shortage of the specified building materials or any products that might be reasonably substituted for them; or
- vi. the unavailability or shortage of sufficiently skilled labour, including subcontractors and consultants; or
- vii. the unavailability or shortage of reasonably required plant and equipment.

- b. The original Quote shall be automatically adjusted for any increase in the costs incurred by Us in connection with the Services or supply of Goods (including, without limitation, the cost of labour, subcontractors, and materials), which are wholly or partially attributable to the Covid-19 global pandemic, and which would otherwise have the effect of eroding Our profit margin. It shall be presumed to be impractical for Us to resist any cost increases which are wholly or partially attributable to the Covid-19 global pandemic unless there is irrefutable evidence to the contrary.
- c. The fact that any delays or cost increases that are wholly or partially attributable to the Covid-19 global pandemic, either were foreseen or ought to have been foreseen by Us, shall have no bearing on Our entitlement to pass on cost increases or rely on the protection afforded by any Force Majeure or similar provision in the Agreement.

54. We may invoice for Goods following the signing of this Agreement and before starting works, to secure the supply and pricing of materials as per our Quote. The invoiced amount may be inclusive of shipping, storage, Goods, wastage, and margin. Due to the volatility of worldwide product supply if we do not rely on this clause, we cannot guarantee the supply or pricing of Goods as per our Quote and will instead rely on clause 53 above.

52. If there is a conflict between the specific terms for inspection and consultancy services and other clauses in this contract, then the specific terms for inspection and consultancy services will prevail.

#### Covid-19

53. Notwithstanding any other provision of this Agreement (and in the event of any inconsistency between that provision and this clause, this clause will prevail):
- a. Any obligation on Us to:
- i. commence Services or supply Goods within a certain time frame or by a certain date; or
  - ii. carry out and perform the Services diligently and conscientiously, or