



# STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES AND GOODS

TEN-FRM-06 (ASIA)

Revision Date: 14 Nov 2018

## 1. Definitions and Interpretation

In these Conditions and elsewhere in the Contract, unless a contrary intention appears the following shall mean:

**Anti-Bribery and Anti-Corruption Legislation** includes any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of RCR and the Client) including but not limited to the *Criminal Code Act 1995*(Cth), the *Crimes Act 1914*(Cth), the *Financial Management and Accountability Act 1997*(Cth), the *Commonwealth Authorities and Companies Act 1997*(Cth), the *Malaysian Anti-Corruption Commission Act 2009* (MACC Act), the *Corporations Act 2001*(Cth) and the *Bribery Act 2010*(UK).

**Client** means the party described in Item 2 of the Contract Particulars or if no description has been provided, the entity to which RCR is providing the Services and/or Goods.

**Completion Date** means the date specified in item 7 of the Contract or any extension thereof which RCR must deliver the Goods and/or complete the Services.

**Conditions** means these standard RCR terms and conditions.

**Contract** means the agreement between the Client and RCR evidenced by the Conditions, the Contract Particulars and/or RCR Invoice, and all other documents which are listed in Item 9, of the Contract Particulars or incorporated by written reference into the Contract by RCR. The Conditions take precedence over all other documents including those listed in Item 9 and any other documents provided by the Client.

**Contract Price** means the total price submitted by RCR either as a lump sum fixed price, schedule of rates, cost plus or a combination of these as detailed in the of the Contract Particulars.

**Force Majeure** means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather conditions, industrial disputes (except where restricted to employees of RCR), sabotage or commotion, act or omission of the Client, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of RCR.

**Goods** means the goods, products, materials or equipment supplied by RCR in accordance with this Contract and specified in Item 3 of the Contract Particulars and/or RCR Invoice.

**Intellectual Property** means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information.

**RCR** means the subsidiary of RCR Tomlinson Ltd (ABN 81 008 898 486) described in Item 1 of the Contract Particulars or if no description has been provided, the entity named in the RCR Invoice.

**RCR Invoice** means an invoice setting out the Services and/or Goods supplied to the Client by RCR and claiming payment for the provision of those Services and/or Goods.

**Services** means all the services RCR has agreed to perform for the Client under its offer and specified in Item 3 of the Contract Particulars and/or RCR Invoice.

**Site** means the location where the Services are to be performed.

**Works** means the scope of works being tendered for as detailed in RCR's offer which is inclusive of the Goods and/or Services.

## 2. Validity Period

Our offer is open for acceptance for a period of thirty (30) days from the date of tender submission or such time as the parties agree in writing.

## 3. Deemed Acceptance

In the absence of written acknowledgement, the performance of any of the Works by RCR will be deemed acceptance of the Contract.

## 4. Price

Unless otherwise stated, the Contract Price quoted is net and exclusive of any sales tax including Good and Services tax (GST) or Sales and Services tax (SST).

## 5. Payment

Except as otherwise agreed by RCR in writing, the Client, shall pay all invoiced amounts in Malaysian Ringgit, without right of set off, within thirty (30) days from the date of the RCR Invoice.

If the Client fails to pay RCR the full amount stated in the RCR Invoice in accordance with this clause, then RCR will charge interest on the amount unpaid by the Client at a rate of 2% over RCR's commercial bank overdraft rate.

## 6. Access to Site

The Client must provide RCR access to the Site and possession of a sufficient portion of the Site to enable RCR to properly perform the Works without interference. RCR will be entitled to claim an extension of time and costs incurred as a result of any delay caused due to any interference of the Client or others on Site and/or delay in access to the Site.

## 7. Latent Conditions

Latent Conditions are physical conditions affecting the Site including artificial things but excluding weather conditions which differ materially from the physical conditions which RCR reasonably anticipated at the time of submitting its offer.

RCR will be entitled to claim an extension of time and reasonable costs directly incurred as a result of a Latent Condition.

## 8. Limitation of Liability

Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total liability of RCR to the Client arising out of or in connection with this Contract for all loss, damage, cost or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than fifty percent (50%) of the Contract Price.

## 9. Consequential Loss

Notwithstanding any other provision of this Contract and to the full extent permitted at law, neither party is liable for any indirect, special, contingent or consequential type losses or damages which includes but is not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.

## 10. Proportionate Liability

Subject to clauses 8 and 9 above, RCR shall be proportionately liable to the extent that RCR caused or contributed to such claim, demand, proceeding, cost, expense, loss, liability or damage under the Contract.

## 11. Delays

The Client shall reimburse RCR all reasonable costs including but not limited to overheads incurred by RCR for any delays except for delays caused by RCR itself.

If RCR does not deliver the Goods or complete the Services by the Completion Date RCR will pay to the Client as full and final remedy for delay, damages at the rate of 0.1% of the Contract Price per day to a maximum of 5% of the Contract Price in the aggregate.



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The Client agrees such damages are a genuine and reasonable pre-estimate of loss for delay arising out of the Contract.

### 12. Returned Goods

RCR is not under any duty to accept Goods returned by the Client. If RCR agrees to accept returned Goods from the Client, the Client must return the Goods to RCR at any place directed by RCR and on such other terms as RCR directs.

### 13. Storage

RCR reserves the right to make a reasonable charge for storage of the Goods or any component of the Client to be used in manufacture or supply of the Goods, if delivery instructions are not provided by the Client within 14 days of a request by RCR.

### 14. Title and Risk

14.1 RCR will deliver the Goods on the date as set out in Item 7 of the Contract Particulars to the place nominated in Item 8 of the Contract Particulars.

14.2 On the Client's receipt of the Goods, all risk relating to the Goods passes to the Client. However, if the Client provides any components to RCR for inclusion in the Goods the risk of those components remains with the Client at all times. RCR will use all reasonable care to provide suitable storage of the Client's components but will not be liable for any loss or damage.

14.3 It is acknowledged by the Client that RCR fulfils all of its obligations under this Contract once the Goods are delivered by RCR and received by the Client or collected by the Client, whichever the earlier.

14.4 Title in the Goods remains with RCR until all sums due and owing by the Client to RCR are paid in full notwithstanding the delivery, receipt, collection or passing of risk to the Client.

14.5 Until title of the Goods passes, RCR reserves and retains the following rights in relation to the Goods until all accounts owed by the Client to RCR are fully paid:

- a) to enter the Client's premises, or the premises of any associated entity or agent of the Client where the Goods are located, without liability for trespass or any resulting damage and retake possession of the Goods; and
- b) to keep or resell the Goods repossessed under this clause.

### 15. Warranty

15.1 RCR warrants that:

- a) the Goods will be of merchantable quality and be free from substantial defect in workmanship;
- b) any Goods manufactured or fabricated or Services performed by RCR or the Works will be performed to the standard agreed by the parties and as set out in Items 3 and 9 of the Contract Particulars;
- c) RCR warrants the Goods for the period stated in Item 6 of the Contract Particulars, and where no period is stated, 3 months following receipt of the Goods and only insofar as the defect is a result of faulty workmanship of RCR or the use of substandard materials by RCR. If the Client finds a defect with the Goods or Services the Client must notify RCR in writing of the defect within seven (7) days of discovery of the defect and must take all reasonable precautions to prevent the use of the Goods;
- d) RCR will be responsible for the costs of actual rectification/replacement works only and any associated costs (including removal or transportation costs) shall be borne by the Client; and

- e) if RCR uses a subcontractor or supplier or other person to perform any work under the Contract (**Other Person**), any work, labour and services carried out by the Other Person shall only be warranted by RCR to the degree that the Other Person indemnifies RCR.

### 16. Defects Liability Period

The defects liability period will commence from the Completion Date or upon issue of the certificate of practical completion for the Works whichever is earlier and shall be for a period of 12 months, unless otherwise stated in the Contract. Any additional warranty provided by a manufacturer for Goods which RCR has supplied will be passed on to the Client on agreement with the manufacturer.

During the defects liability period, RCR will make good or replace (as the case may be) defective Goods and/or Services, excluding:

- a) any interfacing between the Client's equipment, Site, plant or design (unless expressly included as part of Services under the Contract);
- b) ordinary wear and tear; and
- c) any damage which has been caused or contributed by the Client's negligence or acts or omissions.

### 17. Intellectual Property

RCR retains all intellectual property and ownership rights of such in any Intellectual Property and other information relating to the Works which is created or modified by RCR during the Contract.

RCR hereby grants to the Client a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by RCR, for the purpose of or in connection with the Contract.

The Client acknowledges that RCR will not be responsible for any infringement of any intellectual property of the Client that the Client has in any components, material or additional documents and RCR will not be liable for any claim whatsoever due to RCR's use of the Client's intellectual property.

The Client shall indemnify and hold harmless RCR against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Client to RCR.

### 18. Insurance

RCR shall procure and maintain the insurances as specified and marked in Item 10 of the Contract Particulars.

### 19. Confidentiality

The Client acknowledges and agree that any information submitted by RCR in its offer which includes but is not limited to pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client. Such information must at all times remain confidential and shall not be disclosed to any third party without RCR's prior written consent.

If such information is disclosed to a third party with RCR's prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by confidentiality obligations.

### 20. Asbestos and Other Hazardous Materials

The Client is responsible for ensuring Works being performed on the Client's Site is in an asbestos and hazardous free environment. The Client is responsible for all costs arising as a result of the presence of asbestos, asbestos contaminated material or any other hazardous material in or on the Client's Site where the Works are required to be performed.

### 21. Inconsistency



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To the extent of any inconsistencies, the Conditions prevail over any other document.

### 22. Cancellation

Either party has the right to cancel this Contract because of any event beyond the reasonable control of either party which alters the ability of the cancelling party to fulfil the terms of this Contract.

If RCR cancels this Contract, the Client agrees and acknowledges that it will not prosecute any claim in law or in equity against RCR. The Client agrees if the Client cancels this Contract, it will pay to RCR all outstanding RCR Invoices and for all Goods and/or Services provided to the Client up to the date of cancellation and the Client indemnifies RCR against any losses incurred by RCR as a result of the termination.

### 23. Force Majeure

**23.1** If performance by RCR of any obligation under the Contract is prevented, restricted or delayed by Force Majeure then RCR shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 23.2.

**23.2** If supply is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.

### 24. Dispute Resolution

If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and entitled Dispute Notice ('Dispute Notice').

Within seven (7) days of receipt of Dispute Notice representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of Dispute Notice, the General Manager of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

### 25. General

**25.1** The Contract is governed by the law as stipulated in Item 11 of the Contract Particulars and the parties submit to

the non-exclusive jurisdiction of those Courts. Where there is no jurisdiction stipulated in Item 11 the jurisdiction is Malaysia.

**25.2** Any waiver partly or whole of the terms of the Contract will be valid only if in writing and signed by RCR.

**25.3** Any provision of the Contract that is prohibited or unenforceable, such unenforceability shall not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision.

**25.4** These conditions (which can only be waived in writing and signed by an authorised representative of RCR) prevail over all conditions of the Client's order or other documents.

**25.5** If additional terms and/or conditions are attached to, incorporated into or accompany the Client's order, those terms and/or conditions are not accepted by RCR and do not form part of the Contract unless expressly accepted in writing or signed by an authorised representative of RCR.

**25.6** Nothing in these conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

### 26. Anti-Bribery and Corruption

**26.1** RCR is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti corruption.

**26.2** The Client represents and warrants it complies with Anti-Bribery and Anti-Corruption Legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures to be made available to RCR for inspection on demand.

**26.3** The Client represents and warrants it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.

If the Client becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify RCR in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.

**26.4** If RCR, acting reasonably, believes the Client has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, RCR must give the Client written notice of such. If the Client, within 30 days of that written notice, fails to show there is no reasonable basis to conclude a breach has occurred, RCR may terminate the Contract without further notice to the Client.



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**CONTRACT PARTICULARS**

**Date:**

<b>Parties</b>	<b>1</b>	<b>RCR</b>	<i>[Insert name of RCR entity]</i>
		<b>RCR's Representative</b>	Attention: Address:  Phone: Fax: Mobile: Email:
	<b>2</b>	<b>Client</b>	<i>[insert name Client entity]</i>
		<b>Client's Representative</b>	Attention: Address:  Phone: Fax: Mobile: Email:
<b>Services and/or Goods</b>	<b>3</b>	<b>Services</b>	
		<b>Goods</b>	
<b>Price and Payment</b>	<b>4</b>	<b>Price</b>	<i>(total hours sum for Services plus Goods fee plus any other costs)</i>
		<b>Time for Payment</b>	
	<b>5</b>	<b>Time for Acceptance by Client of RCR's Quotation</b>	
	<b>6</b>	<b>Defects Liability Period</b>	[ X ] months from delivery
	<b>7</b>	<b>Completion Date</b>	
	<b>8</b>	<b>The Client Site</b>	
	<b>9</b>	<b>Additional Documents</b>	<i>(For example: List all documents including:</i> <ul style="list-style-type: none"> <li>• <i>schedules</i></li> <li>• <i>specifications</i></li> <li>• <i>annexures</i></li> <li>• <i>drawings</i>)</li> </ul>
	<b>10</b>	<b>Insurances</b>	<input type="checkbox"/> workers compensation in accordance with the applicable legislation; <input type="checkbox"/> professional indemnity where relevant; <input type="checkbox"/> product liability of not less than \$10 million per occurrence; <input type="checkbox"/> public liability of not less than \$10 million per occurrence; <input type="checkbox"/> motor vehicle of not less than \$10 million per occurrence.
<b>11</b>	<b>Jurisdiction</b>	<i>(fill in applicable State of Australia or Malaysia)</i>	