

## TERMS AND CONDITIONS OF SERVICE

Any instructions/orders received by Rock Supplies NZ Limited (**RSNZL**) from the Customer for the supply of goods or services shall constitute acceptance of the terms and conditions contained herein.

### 1. GOODS and SERVICES

- 1.1 RSNZL and the Customer will agree upon the goods and/or services RSNZL is to provide.
- 1.2 By instructing RSNZL to supply such goods and services, the Customer agrees to be bound by and accepts the terms and conditions contained herein.

### 2. PRICING

- 2.1 The Customer agrees to pay the price charged for all goods and services in accordance with invoices produced.

### 3. PAYMENT

- 3.1 All invoices must be paid in full on or before the 20<sup>th</sup> day of the month following the date of the invoice.
- 3.2 Payment of a deposit may be required for accepted quotes/orders. The deposit amount will be confirmed upon acceptance of the quote. If a deposit is required, work will not be scheduled and materials (if required) will not be ordered until the deposit has been received by RSNZL.
- 3.3 RSNZL may impose a credit limit on the Customer, and alter the credit limit without notice. Where the credit limit is exceeded RSNZL may refuse to supply goods or services to the Customer.
- 3.4 RSNZL may notify the Customer at any time that it has ceased to supply goods or services on credit to the Customer.
- 3.5 Interest may be charged by RSNZL on any amount owing from time to time from the due date until the date payment is received by RSNZL at a default rate of 15% per annum, calculated daily. The customer shall indemnify RSNZL against any expenses, disbursements and legal costs incurred by RSNZL in connection with the enforcement of any rights contained in this contract, including legal fees on solicitor / client basis and/or debt collection agency fees.
- 3.6 RSNZL will apportion payments received to outstanding accounts as it thinks fit. RSNZL reserves the right to request payment for any goods / services from the Customer prior to the commencement of any services.

### 4. AGENCY

- 4.1 The Customer authorises RSNZL to contract either as principal or agent for the provision of goods or services that are the matter of this contract. Where RSNZL enters into any such necessary subcontract it shall be read with and form part of this contract and the Customer agrees to pay any amounts due under that contract.

### 5. RETENTION OF TITLE

- 5.1 If RSNZL provides any goods to the Customer, title to those goods shall remain with RSNZL until such time as payment in full for the goods and/or the services has been received by RSNZL (notwithstanding any period of credit allowed by RSNZL).
- 5.2 The Customer gives irrevocable authority to RSNZL to enter any premises occupied by or under the control of the Customer, at any reasonable time, to remove any goods not paid for in full by the Customer, whether or not payment for those goods has fallen due.
- 5.3 RSNZL shall not be liable for costs, damages or expenses or any other losses incurred by the Customer or any third party as a result of action taken under clause 5.2, nor liable in contract or in tort or otherwise in any way whatsoever.

### 6. PPSA SECURITY INTEREST and PERSONAL GUARANTEE

- 6.1 The Customer grants to RSNZL a security interest (as defined in the Personal Property Securities Act 1999 ("PPSA")) in all of the Customer's present and after acquired personal property that RSNZL supplies the Customer and all present and after acquired personal property being proceeds of such property, which shall secure the obligation of the Customer to pay the amount owing and any other obligations of the Customer to RSNZL under this contract.
- 6.2 As and when required by RSNZL the Customer shall, at its own expense, provide all reasonable assistance and relevant information and do all things necessary to enable RSNZL to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, perfect, register and enforce RSNZL's security interest in respect of the goods supplied, in accordance with the PPSA.
- 6.3 The Customer shall not change its name without first notifying RSNZL of the new name not less than 7 days before the change takes effect.
- 6.4 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this contract.
- 6.5 The Customer waives their right to: receive notice under section 120(2) and 129; receive a statement of account under section 116; receive surplus distributed under section 117; recover any surplus

under section 119; object to any proposal of RSNZL to retain collateral under section 121; not have goods damaged in the event that RSNZL were to remove an accession under section 125; apply to the Court for an order concerning the removal of an accession under section 131; redeem collateral under section 132; and receive a verification statement under section 148.

6.6

Where the Customer is a limited company or partnership, the Director(s) and or authorised signatories of the Customer signing these terms or credit application agree they guarantee and shall be personally liable for the obligations of the Customer and all amounts recoverable by RSNZL from the Customer shall be recoverable from the Director(s) and/or authorised signatories on the terms and conditions detailed in the current form of The Law Association of New Zealand Legal Forms Deed of Guarantee.

### 7.

7.1

### DEFAULT

The security interest created by clause 6 of this contract becomes immediately enforceable if any of the following events occur:

- (a) the Customer fails to pay any amount owing on the due date;
- (b) the Customer sells, parts with possession, leases or disposes of any goods or does anything inconsistent with RSNZL's ownership of the goods prior to making payment in full to RSNZL;
- (c) RSNZL believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver, liquidator, statutory manager or voluntary administrator appointed, or is insolvent or unable to pay its debts as they fall due; or
- (d) the goods are at risk, as that term is defined in the PPSA.

### 8.

8.1

### LIABILITY

To the full extent permitted by law, RSNZL shall not be liable:

- (a) for any loss or damage of any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by RSNZL to the Customer and without limiting the generality of the foregoing of this clause RSNZL shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss;
- (b) except as provided in this contract in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods or services provided by RSNZL to the Customer; or
- (c) for any delay or failure to supply goods or services.

8.2

The Customer shall indemnify RSNZL against all claims 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 RSNZL or otherwise, brought by any person in connection with any matter, act, omission, or error by RSNZL its agents or employees in connection with the goods or services.

### 9.

9.1

### WARRANTIES

The only guarantees applying to the goods and services supplied by RSNZL are those confirmed by RSNZL in writing.

9.2

The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods or services from RSNZL for the purposes of a business in terms of section 2 and 43 of that Act.

9.2

Nothing in this contract is intended to contract out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by the Act.

### 10.

10.1

### CANCELLATION

RSNZL shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods or services to the Customer if the Customer fails to pay any amount owing after the due date or the Customer commits an act of bankruptcy or becomes otherwise insolvent or unable to pay its debts as they fall due. Otherwise, RSNZL may cancel this contract by providing the Customer 2 weeks' written notice.

10.2

Any cancellation or suspension under clause 10.1 of this contract shall not affect RSNZL's claim for amount due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to RSNZL under this contract.

10.3

If the Customer requests suspension or cancellation of the supply of goods and/or services, RSNZL may increase the agreed price to cover any resulting extra expense should this apply or, any out of pocket expenses incurred by RSNZL in connection with the same.

10.4

Two weeks' written notice is to be given by the Customer to RSNZL in the event of suspending or cancelling contracted the supply of goods and/or services.

### 11.

### NOTICE

11.1 Any notice may be given in writing by phone text message, in person, posted, or sent by facsimile or email to the Customer or to any director or representative of the Customer.

## **12. VARIATION**

12.1 RSNZL shall be entitled at any time by notice in writing to the Customer to vary any provision of this contract and the Customer shall be bound thereby except as provided in clause 12.2.

12.2 The Customer shall be entitled within seven (7) days of the Customer's receipt of the notice referred to in clause 12.1 to give 2 weeks' written notice to RSNZL terminating this contract.

12.3 In the event of the Customer giving written notice pursuant to clause 12.2 to RSNZL the purported variation of this contract shall have no effect as between RSNZL and the Customer.

## **13. PRIVACY ACT 2020 AUTHORISATION**

13.1 The Customer acknowledges that RSNZL may collect, hold, use and disclose for or in connection with the following purposes their personal information:

13.1.1 administering, whether directly or indirectly, the Customer's contracts with RSNZL and enforcing RSNZL's rights, entitlements and interests under such contracts;

13.1.2 ascertaining or assessing at any time by any means the Customer's creditworthiness;

13.1.3 enabling RSNZL to communicate with the Customer for any purpose.

13.2 RSNZL may apply the Customer's personal information for any other purpose provided that the Customer is not identifiable.

13.3 The intended recipient of the personal information shall be RSNZL and any third-party providing services to RSNZL in relation to the purposes outlined above. Where such third party is located outside of New Zealand then it may not be required to protect the Customer's personal information in a way that complies with the Privacy Act 2020.

13.4 Such personal information is collected by and will be held by RSNZL.

13.5 Such personal information shall be held and used for as long as RSNZL deems necessary to carry out the functions of its business efficiently.

13.6 The Customer has the right under the Privacy Act 2020 to obtain access to and request correction of any of its personal information held by RSNZL.

13.7 Each party will ensure that its dealings with Personal Information acquired from the other party or in connection with this Agreement, conform with the statutory obligations under the Privacy Act 2020.

## **14. SEVERANCE**

14.1 If any of the terms and conditions contained herein are or become invalid, illegal or unenforceable, they shall be deemed to be modified to the minimum extent necessary to make them valid, legal and enforceable. If such modification is not possible, the relevant term shall be deemed deleted. Any modification or deletion of a term under this clause shall not affect the validity and enforceability of the rest of the T&C's.

## **14. MISCELLANEOUS**

14.1 The Customer shall not assign, novate or otherwise transfer all or any of its rights or obligations under this contract without the written consent of RSNZL.

14.2 RSNZL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

14.3 Failure by RSNZL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations RSNZL has under this contract.

14.4 The law of New Zealand shall apply to this contract.

14.5 Where the terms of this contract are inconsistent with the order or instruction from the Customer, this contract shall prevail.

14.6 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

14.7 If any dispute or difference arises in relation to any aspect of this contract or the implementation or performance of its terms, the parties agree that before taking any formal contentious step, they shall attempt to resolve the dispute or difference by negotiation. If within two weeks of a dispute or difference being raised by a party (by notice in writing to the other party) it has not been resolved by negotiation, the parties shall refer the matter to mediation. If the matter remains unresolved within four weeks of such a referral to mediation, either party may take action in such forum as it sees fit. This clause shall not preclude any party from taking any injunctive or other interim legal proceedings considered necessary for the urgent protection of its rights.

## **15. DEFINITIONS**

15.1 "amount owing" means the price charged by RSNZL for the goods and/or services, and any other sums which RSNZL is entitled to charge under this contract which remains unpaid.

15.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing goods or services from RSNZL.

15.3 "goods" shall mean all goods and/or chattels supplied by RSNZL to the Customer in respect of milk machine testing, parts associated with the repair, replacement and service requirements of milk machines and associated activities, and shall include any fee or charge associated with the supply of goods by RSNZL to the Customer.

15.4 "price" shall mean the cost of the goods or services invoiced by RSNZL.

15.5 "services" shall mean all services provided by RSNZL to the Customer in respect of milk and milk machine testing, services related to the repair and servicing of milk machine and associated activities.