

SHEPHERD TRAFFIC MANAGEMENT SOLUTIONS (“STMS”)

TERMS OF TRADE

1. GENERAL

- 1.1 All Services provided to the Client are governed by these Terms and Conditions of Trade (the “Terms”). By engaging STMS’s services, the Client agrees that:
- the Terms apply to each Contract for the supply of Services by the Contractor to the Client; and
 - the Terms will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms were set out or implied therein in full; and
 - these Terms prevail over any terms of trade provided by the Client to the extent any of the provisions in any other terms of trade are incompatible with these Terms; and
 - the Contractor may vary these Terms from time to time by posting them to the Contractor’s Website. Any variation of the Terms then current requested by the Client must be recorded in writing and signed by the Contractor.
- 1.2 The rights, powers and remedies provided for in the these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any right power or remedy provided to the Contractor by law.

2. INTERPRETATION

“Contract” means any agreement entered into between the Contractor and the Client relating to the Services including, but not limited to, these Terms, any Quotation, or any other document which the Contractor has accepted as forming the basis of an agreement with the Client.

“Client” means any person, company or proprietor acquiring Services from the Contractor.

“Contractor” means Shepherd Traffic Management Solutions (STMS).

“Contractor’s Website” means <http://www.stms.nz>

“CoPTTM” means Code of Practice for Temporary Traffic Management as provided by New Zealand Transport Agency.

“Quotation” means any written quote (including in electronic form) for the supply of Services provided to the Client by the Contractor.

“RCA” means the Road Controlling Authority as assigned in the CoPTTM.

“Services” means services which are the subject of the Contract.

“TMP” means Traffic Management Plan

“TTM” means Temporary Traffic Management

3. VARIATIONS

- 3.1 Any requested variation to the Services covered by these terms must be notified in writing by the Client. The Client shall not vary or stray from the TMP without first notifying and without the express consent of the Contractor in writing.
- 3.2 Any requests made by the Client that result in any additional cost or expense incurred by the Contractor due to any instruction received from the Client or any action or inaction on the part of the Client will be the sole responsibility of the Client and the Client will be responsible for any additional cost or expense incurred.

4. PRICE AND PAYMENT

- 4.1 The price payable for the Services shall be that sum agreed between the parties in the Contract.
- 4.2 The purchase price shall be exclusive of GST and any other tax or duty relating to the supply of the Services from the Contractor to the Client.
- 4.3 The Contractor reserves the right to charge the Client for any loss incurred as a result of the instructions of the Client. That price change will be reflected on the invoice.
- 4.4 The price of the Services shall be paid in full to the Contractor as specified on the Contractor’s invoice to the Client or any other document given to the Client by the Contractor. In the event that such date has not been specified, then payment is due on the date of completion of the Services.

- 4.5 The price shall be paid without set-off or deduction of any kind.
- 4.6 In the event of non-payment, or late payment the Contractor specifically reserves its rights to charge the Client penalty interest at the rate of 5% per month on any outstanding sum until full payment of the outstanding sum and interest has been paid in full. Such interest shall accrue and compound on a daily basis on the total amount outstanding from the date payment was due. All the costs of and incidental to recovery of unpaid monies collection agency shall be payable by the Client.
- 4.7 The Client must pay the Contractor’s costs (including legal costs) incidental to the enforcement or attempted enforcement of the Contractor’s rights, remedies and powers under these Terms of Trade.
- 4.8 Notwithstanding any quotation given, if the actual cost of the work exceeds the quotation we have given to you, then we may charge you the amount of the actual cost.
- 4.9 The actual cost will be determined by:
- any adjustments due to complexity, urgency, or work undertaken which was outside of the scope of work as assigned in the Contract;
 - the cost of any additional resources used by the Contractor over the period of hours or days in providing services under the Contract;
 - any costs incurred by the Contractor on the Client’s behalf; and
 - the cost of any additional goods supplied by the Contractor as part of the Services.
- 4.10 Where the arrangement of a third party is required to provide services, we may charge a margin on the third party invoices which will be included in the Contractor’s invoice to the Client. The Client is at all times responsible for payment of any third party invoices incurred in relation to the Contract.

5. HEALTH AND SAFETY

- 5.1 The Contractor will operate in a manner consistent with its Health and Safety policies together with any site specific requirement notified to them by the Client. The Client warrants to the Contractor that any worksite which the Contractor enters to perform Services for the Client is operated in compliance with the Health and Safety at Work Act 2015 and the Health and Safety in Employment Act 1992 and that the Client will notify the Contractor of any site specific requirements.

6. LIABILITY AND INDEMNITY

- 6.1 Except to the extent of direct damage or loss to the Client caused by a breach of Contract by the Contractor and to the extent allowed by law, the Contractor has no liability (in contract, tort, or equity, including negligence) to the Client or any other person or entity, including for (but not limited to):
- failure to deliver the Services by a specified date or in a specified manner;
 - events or circumstances beyond the Contractor’s control;
 - breaches of the TMP as a result of the Client, actions of the Client or its employees, agents, subcontractors or invitees;
 - breaches of these Terms caused directly or indirectly by the Client;
 - any loss or damage which has arisen directly or indirectly from the Services provided by the Contractor under the Contract; and
 - any loss or damage resulting directly, or indirectly from any of the above.
- 6.2 Notwithstanding anything else, the Contractor and the Client specifically agree that if the Contractor is liable to the Client for any reason whatsoever, such liability will not exceed the agreed value of the Quotation for Services or price specified in the Contract.
- 6.3 The Client agrees to indemnify the Contractor for any liability incurred by the Contractor in respect of any loss, cost, expense, or action, suit, claim, demand, cost or expense (including, without limitation, damage to property, plant or equipment) arising as a direct or indirect result of any act or omission by the Client or the Client’s employees, agents or sub-contractors in breach of any obligation contained in any Contract with the Contractor, any

legislation, regulation, bylaw, code or standard or out of or referable to any damage, injury or loss caused by or resulting from any wilful act, error or omission or negligence or recklessness of the Client or its employees, agents or sub-contractors.

- 6.4 The Client agrees to indemnify the Contractor for any loss or damage incurred to the Contractor's tools and/or equipment as a result of any request made by the Client to leave the Contractor's tools and/or equipment unattended. The indemnification is at the replacement value of the tools and/or equipment that was damaged or lost.
- 6.5 If the Contractor is requested to procure services from a third party on behalf of the Client, the Contractor is not liable for any act, omission, workmanship or services provided by the said third party.

7. PERFORMANCE OF WORK

- 7.1 The Contractor will supply the Client with competent staff and the equipment necessary to meet CoPTTM requirements for the work being undertaken and as approved under the TMP. The Contractor's staff shall conduct their duties in a professional manner at all times.
- 7.2 Should the Contractor's staff be advised upon arrival at the Client's depot and/or work site that their work in relation to the Services has been cancelled or postponed for any reason then Client agrees to pay the Contractor for the minimum of a 4-hour standby fee. The 4-hour standby fee is for the sum of \$_____.
- 7.3 The Client agrees to pay for travel to and from the Contractor's depot in Carterton or the Client's depot which will be at the charge out rate specified in attached rates appendix.
- 7.4 All roads within the RCAs territories are classified as Level 1 within the terms of CoPTTM references. Any roads with a posted speed limit of 65 km/hr and above require an advance warning vehicle from the beginning of the set-up to the end of the uplift of the TTM site to be provided by STMS.
- 7.5 Any work carried out on State Highways regardless of the posted speed limit are subject to clause 7.4 of these Terms.
- 7.6 The TTM site (excluding shoulder closures) will be manned by 1 Site Traffic Management Supervisor and 2 Traffic Controllers. This clause applies to Level 1 roads with agreement of both the Contractor and the Client.
- 7.7 The Client agrees the Contractor (including their staff) are in control of all aspects of the TTM. The Client, Client's agents and/or employees will act in their best endeavours to liaise with the Site Traffic Management Supervisor on site as to any changes to the working site and follow the directions of the Site Traffic Management Supervisor in charge of the TTM.
- 7.8 In undertaking our Services we are not obligated to accept any particular request outside the scope of the agreed services in the Contract. Such acceptance of said request is at the Contractor's discretion to decline to accept and commence the request until agreement by both the Contractor and the Client is received in respect of these Terms and/or any further terms required in respect of the request.

8. CLIENT'S RESPONSIBILITIES

- 8.1 The Client will act in their best endeavours to provide reasonable assistance to enable the Contractor to perform the Services under the Contract by:
- providing the Contractor with all information regarding any notice of any fact which might result or impact the delivery of the Services;
 - giving adequate notice and promptly providing any information which may be required for the Contractor to complete the work; and
 - ensuring that the site that the Contractor is to provide the Services on is available and accessible to the Contractor, including any legal authorisation required by the relevant authority or occupier of the property, location or premises to do all things necessary to undertake or complete the Services under the Contract.

9. TERMINATION OF WORK

- 9.1 Where the Contract between the Client and the Contractor is to provide services for an indefinite or non-fixed time frame, the Contractor may terminate the Contract at any time by written notice to the Client.

10. NOTICES

- 10.1 Any notice shall be given in writing via text, email, post or in person.

11. INTELLECTUAL PROPERTY

- 11.1 Any intellectual property which has been used or provided or arisen during the provision of Services under the Contract, the Contractor retains exclusively all ownership, rights and interest in the intellectual property and the Client has no right in or to such intellectual property (or shall remain the exclusive property of the Contractor).

12. MISCELLANEOUS

- 12.1 If for any reason the Services provided to the Client under the Contract are required for longer than the agreed period of time as initially agreed in the Contract to complete the work, then these Terms and the terms of the Contract continue to apply until Services have ceased to be provided by the Contractor.
- 12.2 The failure by the Contractor to enforce any clause under these terms shall not be treated as a waiver of that clause, nor will it affect the Contractor's right to subsequently enforce that clause.
- 12.3 No waiver by the Contractor of any breach or failure to enforce any provision of a Contract shall in any way affect, limit or waive the Contractor's right to subsequently enforce and compel strict compliance with the Contract.
- 12.4 The Client may not transfer or assign any of its liabilities or rights under a Contract to any other person without the prior written consent of the Contractor, which consent may be withheld at the Contractor's unfettered discretion.
- 12.5 If any provision of a Contract is or becomes invalid or unenforceable, that provision shall be deemed deleted from the Contract and such invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 12.6 The Contractor's relationship with the Client is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 12.7 All disputes arising in relation to any Contract shall be referred to mediation in the first instance.
- 12.8 Any dispute arising out of the interpretation of or operation of any Contract which cannot be resolved through mediation shall be referred to arbitration in accordance with the Arbitration Act 1996 for the decision and award of a sole arbitrator (to be nominated by the President of the Arbitrators and Mediators Institute of New Zealand) whose award shall be final and binding upon the parties. However, nothing in this clause shall preclude a New Zealand court of competent jurisdiction from making such orders by way of interim, interlocutory or emergency relief that may be sought by any party to the Contract. Further, nothing in this clause or elsewhere in any Contract shall prevent the Contractor from commencing proceedings in any New Zealand court of competent jurisdiction in respect of any debt due to the Contractor.

13. PANDEMIC

- 13.1 During the performance of the Services under the Contract if New Zealand is at any Alert Level of the Covid 19 Alert System or the region the Services being performed in is subject to the New Zealand Government's Covid 19 Alert Level restrictions or any other pandemic related restrictions which prevents the performance of the Contractor's Services, individually or collectively then failure by the Contractor to perform its obligations under the Contract will not constitute a breach of any of the terms of the Contract or these Terms nor will it give rise to the right of cancellation unless mutual agreement has been reached by both the Client and the Contractor in respect of cancellation.
- 13.2 In the event there are Government imposed restrictions in relation to a pandemic or an Alert Level System in place in New Zealand or in the region where the Contractor's Services are to be performed, where the Government restrictions do not prevent such performance or if the work is deemed to be an "essential service" and the Contractor is able and willing to work but the Client chooses to forego the works, any loss or damage which has arisen directly or indirectly as a result of the Client's choice to forgo or cease the works, the Client will duly remunerate the Contractor for the period of time of which the Contractor would have provided its Services under the Contract but for the Client's choice to forgo or cease the works.