

# Standard Terms & Conditions

## Agreement for Use of Our Services

### 1. Introduction

- 1.1 "Client" shall mean the Client, or any person acting on behalf of and with the authority of the Client, as described on any quotation, work authorization or other form as provided by Dynamixx NZ Ltd to the Client.
- 1.2 "Dynamixx NZ Ltd" shall mean Dynamixx NZ Ltd and its assigns or any person acting on behalf of and with the authority of Dynamixx NZ Ltd.
- 1.3 "Goods" shall mean goods supplied by Dynamixx NZ Ltd to the Client, and where the context so permits shall include any supply of services as hereinafter defined) and includes goods described on any invoices, quotation, work authorization or any other forms as provided by Dynamixx NZ Ltd to the Client.
- 1.4 "Guarantor" means the person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.5 "Price" shall mean the price payable for the Goods and/or Services as agreed between Dynamixx NZ Ltd and the Client in accordance with clause 3 of these terms and conditions.
- 1.6 "Services" shall mean all services related to Temporary Traffic Management and advice provided by Dynamixx NZ Ltd to the Client. This includes any advice or recommendations, and where the context so permits, shall also include any supply of goods as defined above.
- 1.7 "Working Day" means any day of the week other than:
- (a) Saturday and Sunday;
- (b) Any day deemed a Public Holiday by the New Zealand Government.
- The hours of 9:00 am to 5:00 pm shall constitute standard working hours. However, Dynamixx NZ Ltd reserves the right to charge for work conducted outside of these hours, including evenings, weekends, and public holidays, at a rate determined by Dynamixx NZ Ltd.

### 2. Acceptance

- 2.1 Any instructions received by Dynamixx NZ Ltd from the Client for the supply of goods and/or services, and/or the Client's acceptance of goods or services supplied by Dynamixx NZ Ltd or its sub-contractors shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments due to Dynamixx NZ Ltd.
- 2.3 The terms and conditions are binding upon acceptance by the Client, and can only be amended with the written consent of Dynamixx NZ Ltd.

### 3. Price and Payment

- 3.1 The Price shall be either:
- (a) As indicated on invoices provided by Dynamixx NZ Ltd to the Client in respect of goods and/or services supplied; or
- (b) Dynamixx NZ Ltd's quoted Price.
- 3.2 Dynamixx NZ Ltd reserves the right to change the Price in the event of a variation to Dynamixx NZ Ltd's quotation.
- 3.3 Any changes to a quoted Price must be reasonable and justified with respect to goods and/or services supplied.
- 3.4 At Dynamixx NZ Ltd's sole discretion, a deposit may be required prior to commencing any work for the Client.
- 3.5 Where no price is quoted or agreed, the Prices shall be the current amount charged by Dynamixx NZ Ltd for such services at the time of the contract.
- 3.6 At Dynamixx NZ Ltd's sole discretion payment for approved Clients shall be made by instalments in accordance with Dynamixx NZ Ltd's payment schedule.
- 3.7 Time is of the essence for all invoices issued by Dynamixx NZ Ltd. The due date for payment shall be stated on the invoice or communicated to the Client in any other way the Dynamixx NZ Ltd deems appropriate. If no time is stated, payment shall be due twenty (20) working days from the date the invoice is issued.
- 3.8 Payment of the Prices must be made by credit card, direct credit, or by any other method as agreed between the Client and Dynamixx NZ Ltd.
- 3.9 GST and other taxes and duties that may be applicable shall be added to the Price unless expressly stated otherwise.
- 3.10 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Dynamixx NZ Ltd.
- 3.11 Disputes or requests for credit will be considered valid only if brought to the attention of Dynamixx NZ Ltd within 5 working days from the date of invoice.

### 4. Title

- 4.1 Dynamixx NZ Ltd and the Client agree that ownership of goods and/or services shall not pass until:
- (a) The Client has paid Dynamixx NZ Ltd all amounts owing for the goods and/or services; and
- (b) The Client has met all other obligations due by the Client to Dynamixx NZ Ltd in respect of all contracts between Dynamixx NZ Ltd and the Client.
- 4.2 Dynamixx NZ Ltd, at its sole discretion, may supply goods and/or services to the Client subject to a security interest in the goods or against the Client's assets.
- 4.3 In the event Dynamixx NZ Ltd chooses to exercise its discretion under cl. 4.2, the Client must sign all documents necessary to provide Dynamixx NZ Ltd a registrable security interest to the extent Dynamixx NZ Ltd deems necessary.

### 5. Consumer Guarantees Act 1993

- 5.1 If the Client is acquiring goods and/or services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of goods and/or services from Dynamixx NZ Ltd to the Client.

### 6. Intellectual Property

- 6.1 Copyright in all designs, reports, specifications, documents, and other materials provided to the Client by Dynamixx NZ Ltd shall remain vested in Dynamixx NZ Ltd and shall only be used by the Client at Dynamixx NZ Ltd's discretion.
- 6.2 The Client warrants that any designs, materials, or instructions provided to Dynamixx NZ Ltd by the Client will not cause Dynamixx NZ Ltd to infringe any patent, registered design, trade mark or copyright in the execution of the Client's order.

- 6.3 The Client indemnifies Dynamixx NZ Ltd against any action taken by a third party against Dynamixx NZ Ltd for any infringement of patent, registered design, trademark or copyright, pursuant to the Client's breach of cl. 6.2.

- 6.4 If during the course of the contract between Dynamixx NZ Ltd and the Client, Dynamixx NZ Ltd develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of Dynamixx NZ Ltd and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of Dynamixx NZ Ltd.

### 7. Default & Consequences of Default

- 7.1 Interest on overdue invoices shall accrue from the date the payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 7.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify Dynamixx NZ Ltd from and against all costs and disbursements incurred by Dynamixx NZ Ltd in pursuing the debt, including but not limited to legal costs and collection agency costs.
- 7.3 Without prejudice to any other remedies Dynamixx NZ Ltd may have, if at any time the Client is in breach of any obligation (including those relating to payment), Dynamixx NZ Ltd may suspend or terminate the supply of goods and/or services to the Client and any of its other obligations under the terms and conditions.
- 7.4 Dynamixx NZ Ltd will not be liable to the Client for any loss or damage suffered by the Client pursuant to Dynamixx NZ Ltd exercising its rights under cl. 7.3.
- 7.5 Without prejudice to Dynamixx NZ Ltd's other remedies at law, Dynamixx NZ Ltd shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Dynamixx NZ Ltd shall, whether or not due for payment, become immediately payable in the event that:
- (a) Any money payable to Dynamixx NZ Ltd becomes overdue, or in Dynamixx NZ Ltd's opinion the Client will be unable to meet its payments as they fall due; or
- (b) The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement for the benefit of its creditors.

### 8. Privacy Act 1993

- 8.1 The Client and the Guarantor(s) authorises Dynamixx NZ Ltd to:
- (a) Collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and/or services to the Client; and
- (b) Disclose information about the Client, whether collected by Dynamixx NZ Ltd from the Client directly or obtained by Dynamixx NZ Ltd from any other source to any other credit provider or any other credit reporting agency for the purpose of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 8.2 Where the Client and/or Guarantors are an individual the authorities under cl. 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 8.3 The Client and/or Guarantors shall have the right to request Dynamixx NZ Ltd for a copy of the information about the Client and/or Guarantors retained by Dynamixx NZ Ltd to correct any incorrect information about the Client and/or Guarantors held by Dynamixx NZ Ltd.

### 9. Assignment and Subcontracting

- 9.1 The Client shall not directly or indirectly assign, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, this agreement except with the prior consent of Dynamixx NZ Ltd, which consent may be withheld in the absolute discretion of Dynamixx NZ Ltd.
- 9.2 Dynamixx NZ Ltd may subcontract the performance of the services or any other obligation of Dynamixx NZ Ltd to any party it deems fit.
- 9.3 Dynamixx NZ Ltd shall notwithstanding any subcontracting remain liable to the Client for the performance of the services and of other obligations of Dynamixx NZ Ltd under their agreement.

### 10. Insurance

- 10.1 Dynamixx NZ Ltd will maintain in full force and effect during the term of this agreement Professional Indemnity Insurance cover and Statutory Liability Insurance cover with a reputable insurer up to a maximum cover amount of \$1,000,000.00. Upon request, Dynamixx NZ Ltd will provide to the Client evidence that such insurance policy is in effect.

### 11. Force Majeure

- 11.1 Neither party shall be liable for any failure or delay in complying with any obligation imposed on that party under this agreement if:
- (a) the failure or delay arises directly or indirectly from an event or circumstance reasonably unforeseeable or beyond that party's control and not arising from the fault or insolvency of that party (Event). The following are included as, but not limited to, events or circumstances reasonably unforeseeable or beyond a party's control:
- (i) act of God;
- (ii) earthquake, flood, fire, storm and adverse weather conditions or natural events for which provision could not reasonably have been made;
- (iii) interruption or failure of any utility services, or unpredictable delays which could not reasonably be prevented in delivery of materials, equipment or services necessary for compliance by that party with an obligation under this agreement;
- (iv) sabotage, riot, civil disturbance, explosion, terrorist acts, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);

- (v) act or omission of any authority not directly or indirectly arising from any act or omission by that party, its agents, representatives or advisors;
- (vi) governmental restraint, sanction, expropriation, prohibition, intervention, direction or embargo;
- (vii) strike, lockout, work stoppage or other labour hindrance.
- (viii) that party complies with cl. 11.2

- 11.2 A party which wishes to rely on cl 12.1 shall:
- (a) Give the other party written notice as soon as possible after becoming aware of the Event or likelihood of the Event, providing details of the nature, expected duration and effect of the Event, and keep the other party informed of any changes in the nature of the cause and of the cessation of the Event; and
- (b) Use its reasonable endeavours to:
- (i) mitigate the effects of the Event on that party's obligations under this agreement.
- 11.3 No party shall, by virtue of this clause, be required against its will to settle any strike, lockout, work stoppage or other labour disturbance.
- 11.4 Clause 11.1 does not excuse a party from any obligation to make a payment when due under this agreement.

### 12. Arbitration

- 12.1 Any dispute, difference or claim arising out of or in connection with this agreement, or the subject matter of this agreement, including any dispute as to its existence or validity (Dispute) will be referred to arbitration by a single arbitrator. The arbitration will be commenced by a party giving notice, in writing, to the other party stating the subject matter and details of the Dispute and requiring the Dispute to be referred to arbitration. The arbitrator will be appointed by the parties, or failing agreement within 5 Working Days after, and exclusive of, the date of giving the notice, will be appointed at the request of a party by the president or vice-president for the time being of Arbitrators' and Mediators' Institute of New Zealand or the nominee of such president or vice-president. The place of arbitration will be Auckland.
- 12.2 The parties will bear their own costs (including legal costs) and an equal share of the costs of the award in relation to the arbitration.

### 13. No Partnership, Joint Venture

- 13.1 Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/ employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of the other party, except as expressly provided for in this agreement.

### 14. Disclaimer

- 14.1 Dynamixx NZ Ltd shall not be liable to the Client for any loss of profits, or any consequential, indirect or special loss or damages suffered by the Client, arising directly or indirectly from any breach by Dynamixx NZ Ltd of this agreement or from any negligence or other act or omission of Dynamixx NZ Ltd.
- 14.2 Dynamixx NZ Ltd shall not be liable to any party for any loss of profits, or any consequential, indirect or special loss or damages suffered by a party, arising directly or indirectly from any breach by a subcontractor of Dynamixx NZ Ltd of this agreement or from any negligence or other act or omission of a subcontractor of Dynamixx NZ Ltd.
- 14.3 Dynamixx NZ Ltd shall not be liable for any loss or damage arising from the act, omission or negligence of the Client, Subcontractors or any third party when using Dynamixx NZ Ltd's goods and/or services.
- 14.4 For Clarity, Dynamixx NZ Ltd bears no liability for the failure of any other party to comply with the traffic management plan, advice or other service provided by Dynamixx NZ Ltd.
- 14.5 In the event of any breach of this contract by Dynamixx NZ Ltd the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the goods/services supplied.

### 15. Authority to Instruct, Proper Purpose

- 15.1 The Client warrants they have all relevant authorities and consents to instruct Dynamixx NZ Ltd. This includes but is not limited to:
- (a) Consent of local council or other local governing body;
- 15.2 The Client warrants to only instruct Dynamixx NZ Ltd for a proper purpose.

### 16. General

- 16.1 No
- (a) Amendment to this agreement;
- (b) Agreement between the parties for the purpose of, or referred to in, this agreement;
- (c) Consent or approval for the purposes of, or referred to in, this agreement;
- Is effective unless it is in writing and signed (if cls. 16.1(a) or 16.1(b) apply) by both parties or (if cl 16.1(c) applies) the party required to give the consent or approval.
- 16.2 Each party shall pay its own costs in respect of entry into and negotiation of this agreement.
- 16.3 If any provision of this agreement is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 16.4 This agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.
- 16.5 Notwithstanding cl. 16.1, Dynamixx NZ Ltd reserves the right to review these terms and conditions at any time. If, following any such review there is to be any change to these terms and conditions, then that change will take effect from the date on which Dynamixx NZ Ltd notifies the Client of such change.
- 16.6 The failure of Dynamixx NZ Ltd to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Dynamixx NZ Ltd's right to subsequently enforce that provision.