



## **RE DECORATORS LTD**

### **Terms and Conditions**

1. These terms and conditions (**our Terms and Conditions**) apply in respect of any painting work carried out by us for you, except to the extent that we otherwise agree with you in writing.
2. These Terms and Conditions and our Quotation constitute the entire contract between us, as the painters, and you, as customer for the painting work specified in the Quotation.

#### **OUR QUOTATION / ACCEPTANCE**

3. Unless withdrawn in writing, otherwise agreed, or specified in the Quotation, our Quotation is available for acceptance for 90 days from the date of the Quotation.
4. Your acceptance should be confirmed in writing however, in the absence of written acceptance you will be bound to these Terms and Conditions if, after receipt of the Quotation, you provide an oral or written instruction for us to commence the painting work.
5. We will not be bound by a Quotation unless such is in writing.
6. Our Quotation does not include goods and services tax unless expressly stated to do so. Goods and services tax is payable in addition to any applicable charges.

#### **PAYMENT**

7. Invoices are deemed to be "payment claims" as per section 20 of the Construction Contracts Act 2002 (**the Act**).
8. Invoices are rendered at the end of each week/month and shall cover work done and costs incurred including variations up to the end of each week/month.
9. Invoices are payable by the due date shown on the invoice. You agree that service may occur via email. If we send invoices to you via email, you agree that you are deemed to have received and accepted the invoice once it has been sent to any email address you provided for this purpose.
10. You must examine each invoice and notify us within seven (7) days of the date of the invoice of any alleged error. After such period, the invoice will be deemed for all purposes to be correct and no claim to the contrary may be brought by you against us.
11. If you wish to dispute the amount invoiced you must, within seven (7) days of the date of the invoice and, in accordance with sections 21(2) and (3) of the Act, respond to us in writing with a payment schedule: identifying the invoice to which the payment schedule relates; detailing a scheduled amount (the amount you propose to pay), the manner in which you calculated that amount, and your reasons for not paying the amount invoiced in full. You must also pay the scheduled amount by the due date.



12. If we disagree with your payment schedule, we may refer the matter to adjudication in accordance with clause 40 of these Terms and Conditions.

#### **VARIATION OF ORDERS**

13. A variation of the painting work may be agreed between the parties.

14. Variations include, without limitation:

- (a) any change to the scope, quality or timing of the work, any circumstance that changes the cost of performing our work from that reasonably foreseeable at the time of the Quotation arising from a written instruction from you or your representative by way of a signed Work Order; or
- (b) any other circumstance which is stated in these Terms and Conditions to be a variation arising from your acceptance of these Terms and Conditions.

15. We will advise you as soon as practicable of any change to our Quotation price arising out of any variation.

16. We may at our sole discretion on written notice withhold performance of any work that we reasonably consider to be a variation until we have received your written instruction, or where we have submitted a price for a variation, your agreement to that submitted price.

#### **TIME FOR COMPLETION**

17. We will endeavour to meet the reasonable target completion date made known to us or agreed by us, and in the absence of any agreed target date will complete our work within a reasonable time. We will not be liable for liquidated or other damages for completion delays. The time for completion shall be extended for any event directly or indirectly causing delay including but not limited to: access, weather conditions, labour disputes, strikes, accidents, fire, changed work sequence, lack of information or approvals, or for any suspension of work.

Should it be necessary due to circumstances beyond our reasonable control to engage other resources or to do work outside ordinary working hours (7.30am to 5pm), we will endeavour to meet your completion date but any extra cost so incurred will be a variation.

#### **DEFAULT**

18. In the event of a default of any of these Terms and Conditions including, but not limited to, if a payment schedule is not provided in accordance with clause 11 of these Terms and Conditions and payment is not made by the due date or, a payment schedule is provided but the scheduled amount is not paid by the due date or, as a result of adjudication you have been ordered to pay an amount to us by a certain date and such is not paid accordingly, we may at our sole discretion:

- (a) give notice of our intention to suspend work pursuant to section 24A of the Act and if you fail to remedy the situation within 5 working days, suspend work;
- (b) terminate the contract;



- (c) claim and recover all costs and losses incurred as a result of our suspending and/or resuming work and/or terminating the contract including but not limited to loss of profit arising out of such termination;
- (d) charge default interest at the rate of 12% per annum on any amount not paid by the due date, calculated from the due date of each invoice until the date we receive payment in full; and
- (e) charge you all costs incurred by us in the collection of any overdue amount from you including, without limitation, all legal costs on a solicitor/client basis and any collection agency charges incurred by us, up until the date of payment.

19. If we elect to exercise our right to suspend work we will, in addition to the rights specified above:

- (a) not be liable for any loss or damage suffered by you or any third party as a result of our exercising our right to suspend work;
- (b) be entitled to an extension of time to complete the contract if we elect to complete such; and/or
- (c) be entitled to lift the suspension even if the amount has not been paid, if we so elect.

20. Any payment received by us will first be applied in reduction of interest and any costs incurred by us under this clause, the remaining balance of any such payment will then be applied to reduction of any other amounts outstanding to us.

#### **CUSTOMER WARRANTIES**

21. You warrant that:

- (a) You are authorised to accept and are accepting these Terms and Conditions personally or as agent for and on behalf of the Customer.
- (b) If the Customer is a trust, these terms will bind each trustee of the trust as well as personally. Our rights against each trustee will only be limited if the trustee is an independent trustee (being a trustee who is not listed as a beneficiary) in which case the trustee's liability will be limited to the assets of the Trust. This clause will however not affect the liability of an independent trustee who has guaranteed your obligations under this agreement (if applicable).
- (c) You cannot assign all or any of your rights or obligations under this contract unless we agree specifically in writing. You must advise us of any alteration to your entity structure and/or of any revocation of an agent's authority. Until such written confirmation is received and specifically accepted by us in writing you shall remain liable for any amount owing and our conduct shall not be deemed acceptance or affirmation of any assignment or revocation.

#### **WARRANTY**

22. You will notify us of any defects discovered in our workmanship. We will remedy any defective workmanship and at our sole discretion repair or fix any faulty workmanship reported to us in



writing within 90 days of completion of the work or any defined stage of the work, or within any longer period agreed or stated in our quotation. We will not be liable for any consequential costs whatsoever arising directly or indirectly out of any defect or failure. This warranty is in addition to any rights you may have as a consumer under the Consumer Guarantees Act 1993 (if applicable).

23. No warranty is given as to the reappearance of rust. Unless rust is completely removed (which in most cases is impossible) rust is likely to reappear within 6 to 12 months.
24. No warranty is given in respect of ageing of paint applied. Dark colours generally speed up the ageing process of paint and may cause blistering in a short period of time. Accordingly, we recommend lighter colours be used when choosing bulk colour areas.

#### **LIMITATION AND EXCLUSION OF LIABILITY**

25. To the maximum extent permitted by law, we exclude all liability to you or any other person for, and you indemnify us against any claim by any person about, any loss, injury, damage, delay, deterioration, our failure to deliver the goods or perform the painting work, any minor variation in product specifications including but not limited to colour or design, which may occur from time to time, and whether arising because of breach of contract, tort including negligence (including negligent advice), our wilful act or omission or breach of statutory duty.
26. In any event and subject to clause 25, should a court or adjudicator find us liable, our maximum aggregate liability to you arising out of any claim for loss or damages, however arising, shall not exceed the lesser of: a) the contract price; b) the value of the goods or services which are the subject of the claim; or c) the actual value of the loss you have incurred.
27. Furthermore, we note that while all care is taken around windows and glass, older glass may crack easily as it becomes brittle with age. We will not be liable for any glass that is broken or cracked in the course of the painting work except for that caused due to our negligence.

#### **MATERIALS**

28. Materials, equipment or systems nominated or specified by manufacturer, brand or model will be supplied and installed in accordance with the manufacturer's published literature or performance standards and will comply with the specified manufacturer's product literature.
29. Any goods or materials supplied by us including but not limited to paint shall remain our property until paid for in full. If any money remains unpaid or you are in breach of any obligation to us, we or our agents are authorised by you to enter your premises to recover and resell any or all of those goods and materials. You agree that we may register a Financing Statement under the Personal Property Securities Act 1999 to give us a perfected security in any goods supplied.

#### **EQUIPMENT AT WORK SITE**

30. Any equipment supplied or hired by us to complete the painting work, whether in consideration of rental or free of charge, shall remain our property. While such equipment is located on your property during the course of the painting work you will:
  - (a) Not attempt to sell, assign, mortgage, sublet, lend or otherwise deal with or part with our



equipment or any part thereof;

- (b) Not alter or make any additions of the equipment, including, but without limitation, alter make any additions to, deface or erase any part thereof, on or in the equipment or in any manner interfere with it; and
- (c) Irrevocably permit us (or our agents) at any time without notice to enter all premises at which we believe on reasonable grounds the equipment to be stored, to inspect, repair, remove or repossess the equipment supplied by us. We shall not be liable for costs, damages or expenses or any other moneys or losses suffered by you or any third party as a result of this action. You shall also indemnify us against any liability against any third party suffered by us as a result of such actions.

31. Furthermore, clause 30 of these Terms and Conditions shall be binding on any liquidator or receiver in the event that you are put into liquidation or the Official Assignee in the event that you are adjudicated bankrupt.

32. We will provide reasonable protection for our work and equipment while the work is being carried out but we do not accept responsibility for any damage caused to our work or equipment by anyone not engaged by us or otherwise under our direct control. The repair of any damage to our work and equipment (including any costs incurred as a result of the actions set out in clause 20) shall be a variation.

#### **ACCESS TO WORKSITE**

33. You irrevocably authorise us to enter the worksite at any time to carry out our work (including the delivery of goods) and unless otherwise agreed in writing you will provide suitable access, information, documents and facilities to enable us to properly complete or coordinate our site access including use of equipment such as scaffolding.

#### **HEALTH AND SAFETY**

34. We will perform the painting work in accordance with all relevant health and safety requirements and with any site-specific safety requirements notified to us. You will inform us of any hazards in the workplace to which we may be exposed in working on your premises, and we will provide a site-specific safety plan if so requested.

35. We may refuse to work if we are not satisfied that such work can be completed safely.

#### **INSURANCE**

36. We carry public insurance cover with Monument Insurance (NZ) Ltd of \$5,000,000.00. This can be increased at your request.

#### **FORCE MAJEURE**

37. If we cannot carry out any obligation under the contract either in whole or in part because of a force majeure event including anything outside our reasonable control including, without limitation, fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailment, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, defaults of manufacturers and suppliers, the inability to obtain equipment, supplies or other facilities not caused by a failure to pay, or other similar events beyond our control then our



obligations under the contract will be suspended for the duration of the event or waived to the extent applicable.

#### **TERMINATION**

38. Either party may terminate the contract by immediate notice if the other party materially breaches the contract and neglects to rectify the breach within three (3) working days.
39. Termination shall not prejudice or affect the accrued rights or claims or liabilities of the parties.

#### **DISPUTE RESOLUTION**

40. If any dispute or difference arises in connection with the painting work or payments claimed, or any other matter relating to this contract, both parties will endeavour to resolve the matter by negotiation. Either party may at any time refer any dispute to adjudication in the manner set out in section 28 of the Act and may refer any matter that is not resolved by adjudication to arbitration under the Arbitration Act 1966.
41. Notwithstanding this clause, where any dispute or difference arises in connection with the payments claimed, payment is to be made in accordance with clauses 9 to 11 of these Terms and Conditions pending a formal outcome of the dispute or difference.

#### **OTHER MATTERS WHICH AFFECT THE CONTRACT**

42. We acknowledge that the Construction Contracts Act 2002 applies to the painting work. Where the Act's provisions are not mandatory and these Terms and Conditions say something different to what is in the Act, we have intentionally modified the provisions of the Act and these Terms and Conditions should be read accordingly.
43. If a condition or part of a condition is unenforceable, it must be severed from and does not affect the rest of the contract.
44. We are not bound by any waiver, discharge or release of a condition or any agreement which changes the contract, unless it is in writing and signed by or for us.
45. Except as expressly set out in the contract, you acknowledge that the contract records the entire understanding relating to the matters dealt with in the contract and that you are not relying on any other representations, warranties or statements regarding the nature, characteristic or quality of the services provided by us (with the intent that we will not be liable in any manner whatsoever for any errors or omissions in publications or schedules or for statements or representations made by our employees, agents or representatives that are not expressly recorded in the contract).
46. We may amend these Terms and Conditions from time to time without notice. The conditions applicable to the painting work provided are our terms and conditions current at the time at which the Quotation is provided to you.
47. A reference to any law includes any statutory modification, substitution or re-enactment of it.



48. The laws of New Zealand apply to the contract and these Terms and Conditions and any proceedings initiated by either party must be brought against the other party in a court in New Zealand.

**DEFINITIONS:**

“**Act**” means the Construction Contracts Act 2002 and its amendments.

“**contract**” means the Quotation and these Terms and Conditions and any other document which sets out the terms upon which the painting work is provided to you.

“**customer**”, “**you**”, “**your**” means the person contracting with us whether as principal or as agent for another.

“**us**”, “**we**” “**our**” means RE Decorators Ltd and includes its officers, employees, agents and subcontractors.

“**Painting work**” means the work we undertake as set out in the Quotation or variations.

“**Quotation**” means any offer or tender or specifications listed in the Quotation rendered in writing to you.

“**writing**” means any representation of words, figures or symbols capable of being rendered in visible form.

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