

CONTRACTOR AGREEMENT

Between

[INSERT NAME]

and

DARROCH CONTRACTING (2014) LIMITED

m^cveaghfleming
L A W Y E R S
ALBANY

AGREEMENT dated

2023

BETWEEN **[Insert Name]** a company having its registered office at *[insert address]* (the **Principal**)

A N D **DARROCH CONTRACTING (2014) LIMITED** a company having its registered office at BDO Northland Limited, 108 Kerikeri Road, Kerikeri, 0230 (**DCL**)

Introduction

- A. The Principal seeks to engage DCL to provide construction works as known under the Construction Contracts Act 2002 or delivery services of goods and materials.
- B. DCL provides construction works and also delivery services via truck (with driver).
- C. The parties have agreed to contract under the terms and conditions set out below.

IT IS AGREED

Definitions

"Agreement" means this Agreement and includes Schedules attached to this Agreement.

"Terms" means the terms and conditions as set out in this Agreement.

"Amount Owing" means the price of the goods or services plus any costs incurred and charges, insurance charges, repairs, expenses, disbursements, damages, and penalties, and enforcement costs (including and indemnity legal costs on a solicitor-client basis) for which the Principal is liable to pay DCL.

"CCA" means the Constructions Contracts Act 2002.

"Services" means any and all services provided by DCL to the Principal in relation to the Agreement, including the provision, or lending, of any goods incidental to the performance of the Services.

"Quote" means any offer or tender and any drawings or specifications provided by DCL to the Principal.

"Contract Works" means any and all works and advice provided by DCL, the provision of any goods (on loan or to keep), and time and attendance incurred by DCL to perform Services for the Principal, and hire charges, insurance charges, or any fee or charge associated with the supply of the Contract Works by DCL to the Principal.

"Site" means the work site where the delivery of goods are agreed to be dropped off, along with any access ways, including private roads taken, to and from the work site.

Commencement

1. This Agreement shall commence on the date of its execution by both parties and continue until all Contract Works and any variation of those works are completed by DCL and paid for by the Principal, unless terminated prior by either party in accordance with this Agreement.

2. No other term, condition or deviation from the Terms shall be binding unless it is accepted in writing by DCL.

Principal's obligations

3. The Principal shall provide DCL and its vehicles and agents with access to the Site, as well as necessary information, documents and items which DCL may reasonably require to obtain access to the site, in good time. Any toll road charges incurred by DCL for its Services are payable by the Principal.
4. The Principal shall notify DCL as to any obstacles and/or potential obstacles including (but not limited to), locked gates, low hanging bridges, signs and / or other items as set out by the Low Clearance Map website. The Principal shall remove any obstacles as reasonably requested by DCL, and at the Principal's cost.
5. The Principal shall provide information and directions in time to allow DCL to perform and complete the Contract Works.
6. Any deposit required by DCL is payable by the Principal at execution of this Agreement and is non-refundable.
7. The Principal shall pay DCL 's invoices for the Contract Works in full and within seven (7) days following the date of invoice. The Principal acknowledges that no retentions shall apply.

DCL's obligations

8. Subject to payment of its invoices, DCL shall perform the Contract Works for the Principal.
9. Where DCL has followed the plans and specifications provided by the Principal or its agent, the Principal shall indemnify DCL against all damages, penalties, costs and expenses in respect of which DCL may become liable through the provision of the Contract Works.

Quote and acceptance

10. DCL shall produce a Quote for the Principal for the provision of Contract Works upon request only. The Quote shall be subject to any and clarifications and exclusions set out in it and / or plans and specifications attached, and subject to the Terms of this Agreement and shall be valid for a period of thirty (30) days from the date specified on the Quote.
11. The Principal may accept the Quote by signing both copies of the Quote, returning one copy to DCL. In any event by the Principal engaging DCL the provision of Contract Works after it sends any Quote to the Principal, then the Principal is deemed to have accepted the Quote and these Terms, creating a contract.

12. If the Principal requires "special delivery" including but not limited to additional delivery in addition to the Quote, or express delivery, or delivery of fragile items, the Principal agrees to pay for any additional cost involved, and to be treated as a 'variation' (as per below).

Price

13. The price of the Contract Works shall be the price stated in a Quote together with all or any additional Services and goods selected by the Principal, or provided to it by DCL, and subject to any Variation.
14. The price in a Quote for the Contract Works excludes GST, and GST shall be payable by the Principal in addition to DCL.
15. Where no price is stated in writing or agreed, the provision of Contract Works, goods and/or Services by DCL to the Principal shall be deemed to be sold and/or supplied at DCL's current charge rates, and for goods at cost plus a mark-up charge, at the date upon which the invoice is issued to the Principal.
16. Notwithstanding anything contrary in this Agreement or a Quote, the price of the goods and / or Services may be increased by the amount of any reasonable increase in cost of supply of the goods or services between the date upon which the Quote is delivered to the Principal and the date upon which the goods or services are supplied and where such increase is beyond the reasonable control of DCL.

Variations

17. Any changes or alterations to the provision of Contract Works in a Quote or to the scope of Contract Works that are requested verbally or in writing by the Principal or their agent to DCL, and accepted or performed by DCL, shall be treated as a variation to the Contract Works or a Quote.
18. Any and all variations are binding on the parties, including any Contract Works and adjustment to the price or charge by DCL to the Principal.
19. If DCL is requested to undertake a variation without a price being agreed upon then the Principal shall pay DCL's current rates for the Contract Works undertaken and any materials used in the variation.

Cancellation or suspension

20. In the event that the Principal wishes to cancel the Agreement for the provision of Contract Works at any time after acceptance of a Quote, the Principal shall pay all actual and reasonable costs and expenses incurred by DCL together with an administration fee.

- 21.** DCL 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 the provision of Contract Works, the supply of goods or Services to the Principal, or to cancel in whole or in part this Agreement if the Principal is in default of this Agreement for a period of seven (7) days, fails to pay any money owing after the due date, or if the Principal commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967, or if liquidation proceedings are commenced in relation to the Principal, or if the Principal shall otherwise become bankrupt or insolvent, or if any other event occurs which evidences a lack of credit worthiness or insolvency on the part of the Principal.
- 22.** Any cancellation or suspension by DCL pursuant to this clause shall not affect DCL's claim for the Amount Owing at the time of cancellation or suspension or for damages for any breach of any terms of this Agreement or the Principal's obligations to DCL under these Terms.
- 23.** DCL shall be entitled to exercise any and all powers available to it under the CCA including its right to suspend and to terminate the Agreement.

Payment

- 24.** Every invoice of DCL to the Principal is a payment claim pursuant to section 20 of the CCA. It is payable in full and within seven (7) days following the date of invoice, and within that time the Principal may provide a payment schedule to DCL in writing accordance with the CCA which shall:
- (a) Schedule the amount in the payment claim for payment if the Principal accepts the amount claimed in the payment claim; or
 - (b) If the Principal disagrees with the amount claimed in the payment claim, explain how the Principal has calculated that amount, and if there is a difference between what DCL is seeking and the scheduled amount, give the reason for the difference.
- 24.2** If the Principal does not respond to the payment claim by paying the claimed amount in full or providing a valid payment schedule as per the CCA, the claimed amount will become an Amount Owing to DCL in its entirety.
- 25.** The Principal may not deduct or withhold any amount (whether by way of a set-off, counterclaim or otherwise) from the Amount Owing to DCL.
- 26.** DCL reserves the right to charge interest on the Amount Owing at a monthly rate of 3% of the total invoice from the date the payment becomes due and until the Amount Owing is paid by the Principal to DCL in full.

Commencement and completion of Contract Works

- 27.** The Principal acknowledges that any estimate as to the time frames for the commencement and/or the completion of the Contract Works is approximate only.

28. DCL will use its reasonable endeavours to ensure that the Contract Works are commenced and completed within the time frame provided to the Principal but DCL shall not be liable for any delay or failure to do so. There are no liquidated damages.
29. DCL shall not be responsible for any delays caused by any subcontractor. Should any delay occur, the Principal agrees that all costs incurred by DCL as a result of such delay will be charged as a variation to the contract price.

Repair of defects

30. DCL shall at its sole cost rectify any defect in the materials or workmanship of the Contract Works which is notified to DCL in writing within ninety (90) days of completion of the Contract Works and within a reasonable time of receiving written notification of such defect. DCL shall not be liable under this clause to remedy:
 - (a) Any defect covered by a manufacturer's or supplier's guarantee that is available to the Principal and may be enforced by the Principal; and/or
 - (b) Any defect in or damage caused by work undertaken by the Principal or any of the Principal's agents (including but not limited to other contractors of the Principal).

Risks and insurance

31. Any goods supplied by DCL shall be at the sole rights, interest and risk of DCL until the earlier of payment for the goods or delivery of the goods to the Principal.

Ownership

32. Ownership of any goods and/or materials supplied as part of the Contract Works shall not pass to the Principal until the Amount Owing by the Principal to DCL in respect of the goods and/or materials has been paid in full.
33. The Principal acknowledges and agrees under these Terms that the Principal grants a "Purchase Money Security Interest" to DCL, as it is defined in the Personal Property Securities Act 1999 (**PPSA**), in all goods and/or materials supplied by DCL to the Principal.
34. The Principal irrevocably undertakes to sign any further documents and/or provide any further information (which information the Principal warrants to be complete, accurate and up-to-date in all respects) which DCL may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register.
35. The Principal shall not agree to allow any person to register a financing statement over any of the goods supplied by DCL without the prior written consent of DCL and will immediately notify DCL in writing if the Principal becomes aware of any person taking steps to register a financing statement in relation to such goods.

36. The Principal irrevocably grants to DCL the right to enter upon the Principal's property or premises, without notice, and without being in any way liable to the Principal or to any third party, if DCL has cause to exercise any of DCL 's rights under section 109 of the PPSA, and the Principal shall indemnify DCL from any claims made by any third party as a result of such exercise.
37. The Principal will be responsible to DCL for any costs or damages incurred in reclaiming and disposing of the unpaid goods and/or materials. Such costs include but are not limited to loss in value, cost or repossession, damaged premises and recovery, storage, resale and legal costs. These costs shall be recoverable as a debt due to DCL by the Principal.
38. Any and all equipment brought onto the Site by DCL shall be for the sole use of DCL , unless DCL expressly consents to the use of it by other parties in writing.
39. Any damage to DCL 's equipment or materials, whether caused by an act or omission of the Principal or its agents, shall be remedied by way of monetary payment by the Principal to the Contract or, if necessary, have the equipment or materials replaced by the Principal.
40. The Principal grants and DCL may exercise its right to mortgage or security interest over the Site.

Warranty and liability

41. Any warranty, description, representation, or condition whether implied by law, trade, custom or otherwise, and all other liabilities of DCL, whether in tort (including negligence), contract or otherwise are expressly excluded to the fullest extent permitted by law.
42. Insofar as DCL may be liable, notwithstanding anything contained in these Terms, to the extent permitted by law the total liability of DCL whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly out of the provision of the Contract Works or any other breach of DCL 's obligations is limited to the lesser of:
 - (a) the price of Contract Works goods and/or materials complained of; or
 - (b) the cost of completing any necessary repairs/remedial work; or
 - (c) the value of the actual loss or damage suffered by the Principal.
43. DCL is not liable for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Principal or any other person.
44. Any discount offered by DCL to the Principal may be disallowed and DCL reserves the right to withhold or refuse any warranty service until the Principal corrects the default and / or breach.

Dispute resolution

45. In the event of any dispute between DCL and the Principal arising out of this Agreement, the Principal agrees to pay the undisputed part of the Amount Owing.
46. Either party may at any time refer a dispute to adjudication in accordance with Part 3 of the CCA.
47. Where a dispute arises, DCL shall have discretion to proceed to refer the dispute to mediation and if no agreement is reached within seven (7) days of either party providing the other with a written notice of the dispute, then a mediator shall be nominated by the President of the Arbitrators and Mediators Institute of New Zealand. Should the parties not resolve their dispute through mediation within one (1) month of giving notice of their intention to seek mediation assistance, the dispute may proceed to Arbitration under the Arbitration Act 1996. The parties agree that there shall be one arbitrator.

Force majeure

48. DCL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
49. If any party is delayed in or prevented from carrying out any of its obligations under this Agreement (other than a payment of money) due to any circumstances beyond its reasonable control which are to include, without limitation, acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, hurricanes, cyclones, riot, power failure, industrial action, pandemics, defaults of manufacturers and suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond our control that may prevent or delay our supply of goods or Services to the Principal, acts of government, interference by third party, seismic activity, public health event or natural disaster (**Force Majeure Event**) the party affected is to be excused from performance of those obligations for as long as, and to the extent that, the prevention or delay lasts.
50. The party affected by the Force Majeure Event is to take all reasonably practicable steps to limit the effects of that event on the performance of its obligations under this Agreement and is to continue to carry out its obligations under this Agreement to the extent possible despite the Force Majeure Event.
51. Nothing in this clause shall excuse payment of the Amount Owing under this Agreement.

Notices

52. All notices, variations, payment claims, payment schedules and other communication between the parties required by this Agreement shall be deemed to be delivered and

received by the respective recipient(s) immediately if it is sent to the respective recipient(s) last known email address.

Waiver and assignment

- 53. No delay, neglect or forbearance by either party in enforcing against the other a provision of this Agreement will constitute a waiver of, or in any way prejudice any right of that party.
- 54. Any failure or omission by DCL to enforce any of the Terms against the Principal shall not be deemed to be a waiver of any rights that DCL has under this Agreement.
- 55. The Principal may not assign any of its rights or obligations under this Agreement without the prior written consent of DCL.

Collection and use of information

- 56. The Principal authorises DCL to collect, retain and use any information about the Principal for the purpose of assessing the Principal's creditworthiness and/or enforcing any of DCL 's rights under this Agreement.

Miscellaneous

- 57. If any provision of this Agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.

Personal guarantee

- 58. In consideration for DCL agreeing to complete the Contract Works at the request of the Principal, where the Principal is a company or trust, the directors or trustees signing this Agreement must also sign this Agreement in their personal capacity and to personally undertake, jointly and severally, as principal debtors to DCL to pay the Amount Owing by the Principal to DCL and to indemnify DCL against non-payment by the Principal.

SIGNED for and on behalf of
[name of the Principal]
in the presence of:

Signature of Witness

Name of Witness

Occupation of Witness

City/Town of Residence of Witness

Director

Director

SIGNED for and on behalf of
DARROCH CONTRACTING (2014) LIMITED
in the presence of:

Signature of Witness

Name of Witness

Occupation of Witness

City/Town of Residence of Witness

Director

SIGNED by **[name of the director or trustee of
the Principal]** AS GUARANTOR
in the presence of:

Signature of Witness

Name of Witness

Occupation of Witness

City/Town of Residence of Witness

[Name]