Road Data Limited – Terms & Conditions of Trade

1. Definitions

1.1 "RoadData" means Road Data Limited its successors and assigns or any person acting on behalf of and with the authority of Road Data Limited.

1.2 "Client" means the person/s requesting RoadData to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.

1.3 "Incidental Items" means any goods, data, reports, presentations, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by RoadData in the course of it conducting, or supplying to the Client, any Services.

1.4 "Services" means all Services (including but not limited to, mobile retroreflectivity, attendance at meetings with the Client's clients or subcontractors, examination and reporting on possible causes for substandard retroreflectivity measures) supplied by RoadData to the Client at the Client's request from time to time.

1.5 "Price" means the price payable for the Services as agreed between RoadData and the Client in accordance with clause 5 of this contract. All Prices are quoted in New Zealand Dollars unless stated otherwise.

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by RoadData.

2.2 These terms and conditions may only be amended with RoadData's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and RoadData.

2.3 Services are supplied by RoadData only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

2.4 The Client accepts that RoadData will use reasonable efforts and resources to provide standard and non-standard business services. The equipment used shall be operated within the manufacturer's specifications.

2.5 Where applicable to the Services being provided, details of the estimated Price, estimated completion date and work objectives shall be set out in supporting documents attached to this agreement and shall be read in conjunction with these terms and conditions. Any disbursements incurred shall be charged by RoadData at actual and reasonable costs.

2.6 Whilst RoadData shall use reasonable skill, care and efforts to complete any such work objectives using reasonable resources available to RoadData, that on or before the estimated completion date, the Client shall indemnify RoadData against any costs or losses that may result from RoadData's delay or failure to complete the Services due to circumstances beyond RoadData's control.

3. Change in Control

3.1 The Client shall give RoadData not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by RoadData as a result of the Client's failure to comply with this clause.

4. Exclusions

4.1 Retroreflectivity values shall not be provided for:
(a) sections of the road network adversely affected by conditions which preclude capture of data under "normal" operation of the Mobile Retroreflectometer. Such condition include, but are not limited to:
    (i) vehicles parked on markings;
    (ii) road maintenance and construction activities;
    (iii) stock crossings;
    (iv) carrion;
(b) intermittent markings, for example, centrelines where the marking is preceded by a raised pavement marker which effectively shields the marking under 30 metre geometry;
(c) or where free access (as per clause **Error! Reference source not found.**) is not provided or is limited, RoadData shall reserve the right to charge for time spent and/or a fee for re-delivery of the Services.

4.2 Unless otherwise agreed to, RoadData shall limit communication to a single presentation of the data to the Client.

5. Price and Payment

5.1 At RoadData's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by RoadData to the Client; or
(b) RoadData's estimated Price (subject to clause 5). The final price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than twenty percent (20%) will be subject to Client approval before proceeding with the Services; or
(c) RoadData's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days, with RoadData reserving the right to withdraw any quotation prior to acceptance by the Client. Unless otherwise accepted or withdrawn, RoadData's quotation shall lapse after the time period stated.

5.2 Where Services are carried out on a time charge basis requiring RoadData to purchase incidental goods and/or services to complete the Services, RoadData shall reserve the right to oncharge these costs to the Client. All such costs shall be clearly documented and shown on invoices provided to the Client.

5.3 RoadData reserves the right to change the Price if a variation to RoadData's quotation is requested or in the event of increases to RoadData in the cost of labour or materials (including but not limited to disbursements and/or other fees or expenses incurred, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond RoadData's control.

5.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by RoadData, which may be:
(a) on delivery of the Services;
(b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by RoadData.

5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and RoadData.

5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to RoadData an amount equal to any GST RoadData must pay for any supply by RoadData under this or any other agreement for providing RoadData's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Services

6.1 At RoadData's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address.

6.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

6.3 RoadData may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

6.4 Any time specified by RoadData for delivery of the Services is an estimate only and RoadData will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that RoadData is unable to supply the Services as agreed solely due to any action or inaction of the Client then RoadData shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

7. Risk

7.1 Irrespective of whether RoadData retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the

Client and shall remain with the Client until such time as RoadData may repossess the Incidental Items. The Client must insure all Incidental Items on or before delivery.

7.2 RoadData reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 6.1.

7.3 Due to the inherent variable nature of retroreflectivity of pavement marking in a natural environment, the retroreflectivity values provided by RoadData are to be treated as indicative values only. Where areas of concern are identified by the mobile retroreflectometer shall be validated and further testing by a certified hand-held retroreflectometer shall be used in accordance with NZTA M/20 or equivalent.

8. Client's Responsibilities

8.1 It is the Client's responsibility to:
(a) provide free and unimpeded access to the roading network to be surveyed;
(b) obtain (at the Client's costs) and provide RoadData with copies of and/or fee unencumbered access to map reference points against which the measurements are to be referenced in the report;
(c) advise on any relevant safety hazards pertaining to the services and any relevant Traffic Management Plans that the Client may be required to enter into as part of an agreement with the affected Road Controlling Authority(s);
(d) provide directly or indirectly all Temporary Traffic Management measures required by the affected Road Controlling Authority(s), with the objective to minimise risks to RoadData and RoadData's personnel;
(e) manage or control any occupational health and safety laws relating to the work areas and any other relevant safety standards or legislation requirements.

9. Title

9.1 RoadData and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership will not pass until:
(a) the Client has paid RoadData all amounts owing for the Services; and
(b) the Client has met all other obligations due by the Client to RoadData in respect of all contracts between RoadData and the Client.

9.2 Receipt by RoadData of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then RoadData's ownership or rights in respect of the Incidental Items shall continue.

9.3 It is further agreed that:
(a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to RoadData immediately upon request by RoadData;
(b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for RoadData and must pay to RoadData the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
(c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for RoadData and must pay or deliver the proceeds to RoadData on demand.
(d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of RoadData and must dispose of or return the resulting product to RoadData as RoadData so directs.
(e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of RoadData;
(f) the Client irrevocably authorises RoadData to enter any premises where RoadData believes the Incidental Items are kept and recover possession of the Incidental Items.

10. Personal Property Securities Act 1999 ("PPSA")

10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
(b) a security interest is taken in all Incidental Items previously supplied by RoadData to the Client (if any) and all Incidental Items that will be supplied in the future by RoadData to the Client.

10.2 The Client undertakes to:
(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RoadData may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, RoadData for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
(c) not register a financing change statement or a change demand without the prior written consent of RoadData.

10.3 RoadData and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

10.5 Unless otherwise agreed to in writing by RoadData, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10.6 The Client shall unconditionally ratify any actions taken by RoadData under clauses 10.1 to 10.5.

11. Security and Charge

11.1 In consideration of RoadData agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Client indemnifies RoadData from and against all RoadData's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RoadData's rights under this clause.

11.3 The Client irrevocably appoints RoadData and each director of RoadData as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. Client's Disclaimer

12.1 The Client hereby disclaims any right to rescind, or cancel any contract with RoadData or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by RoadData and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

13. Error and Omissions

13.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify RoadData of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford RoadData an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

13.2 For defective Services, which RoadData has agreed in writing that the Client is entitled to reject, RoadData's liability is limited to either (at RoadData's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 13.1.

14. Consumer Guarantees Act 1993

14.1 If the Client is acquiring 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 Services by RoadData to the Client.

15. Intellectual Property

15.1 RoadData shall retain copyright in any Incidental Items including reports; and
(a) shall assign ownership of the reported findings to the Client; and

(b) upon RoadData receiving full and cleared payment, RoadData shall grant the Client:
    (i) a non-exclusive royalty free copyright licence to use the report for the purposes of reporting measurements results for the Client's own internal reporting systems and for reporting to the Client's client of roadmarking services and related subcontractor; and
    (ii) a right to reproduce the report in full only unless otherwise agreed to by RoadData.

15.2 The Client warrants that all data, information, specifications or instructions given to RoadData will not cause RoadData to infringe any copyright, patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify RoadData against any action taken by a third party against RoadData in respect of any such infringement. The Client shall identify any proprietary rights that any third party may have in relation to any information provided.

15.3 The Client shall not make any public reference to the provision or provision of Services provided by RoadData without the prior consent of RoadData. This shall include, but not be limited to, any advertising or promotional material of the Client.

15.4 The Client agrees that RoadData may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which RoadData has created for the Client.

16. Default and Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at RoadData's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Client owes RoadData any money the Client shall indemnify RoadData from and against all costs and disbursements incurred by RoadData in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RoadData's collection agency costs, and bank dishonour fees).

16.3 Without prejudice to any other remedies RoadData may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RoadData may suspend or terminate the supply of Services to the Client. RoadData will not be liable to the Client for any loss or damage the Client suffers because RoadData has exercised its rights under this clause.

16.4 Without prejudice to RoadData's other remedies at law RoadData shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to RoadData shall, whether or not due for payment, become immediately payable if:
(a) any money payable to RoadData becomes overdue, or in RoadData's opinion the Client will be unable to make a payment when it falls due;
(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

17.1 RoadData may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice RoadData shall repay to the Client any money paid by the Client for the Services. RoadData shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by RoadData as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. Privacy Act 1993

18.1 The Client authorises RoadData or RoadData's agent to:
(a) access, collect, retain and use any information about the Client:
    (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    (ii) for the purpose of marketing products and services to the Client.
(b) disclose information about the Client, whether collected by RoadData from the Client directly or obtained by RoadData from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.

18.3 The Client shall have the right to request RoadData for a copy of the information about the Client retained by RoadData and the right to request RoadData to correct any incorrect information about the Client held by RoadData.

19. Dispute Resolution

19.1 All disputes and differences between the Client and RoadData touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

20. Compliance

20.1 The Client and RoadData shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

20.2 RoadData's measurement and reporting practices will be compliant with AS/NZS ISO/IEC 17020.

21. Confidentiality

21.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

22. General

22.1 The failure by RoadData to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RoadData's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

22.3 RoadData shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RoadData of these terms and conditions (alternatively RoadData's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).

22.4 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 RoadData nor to withhold payment of any invoice because part of that invoice is in dispute.

22.5 RoadData may license or sub-contract all or any part of its rights and obligations without the Client's consent.

22.6 The Client agrees that RoadData may amend these terms and conditions at any time. If RoadData makes a change to these terms and conditions, then that change will take effect from the date on which RoadData notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for RoadData to provide Services to the Client.

22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

22.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from RoadData on request.