

## Elite Safety Limited General Terms and Conditions

### 1. Parties And Definitions to This Agreement

Throughout these terms and conditions the following defined terms shall apply:

- a. "Elite Safety" - is Elite Safety Limited, any person or entity/company acting for or on behalf of Elite Safety Limited or with the permission or authority of Elite Safety Limited.
- b. "Client" - the entity named as the customer of Elite Safety recorded in the Engagement Agreement and/or Estimate/Quote and includes any person or entity acting for or on behalf of the Client or with the permission or authority of the Client as detailed on any quotation, estimate, Engagement Agreement, or notation as provided by Elite Safety to the Client.
- c. "Engagement Agreement" – means the summary form listing the Client and the details of the job description and the Services, and includes any estimate, quote or notation supplied by Elite Safety.
- d. "Guarantor" - any person (or persons), or entity, listed in the Engagement Agreement and/or Estimate/Quote who agrees to be held liable for the debts incurred by the Client in the course of business between the Client and Elite Safety Limited on a principal debtor basis.
- e. "Goods" - all goods supplied by Elite Safety to the Client, and includes (but is not limited to) traffic management equipment, medical equipment and supplies.
- f. "Services" - all services supplied by Elite Safety to the Client and includes (but is not limited to) any recommendations or consultancy advice, client interaction, temporary traffic management services including training, traffic management planning and advice, health & safety consultancy, event Safety and medical, project management, procurement support, or administrative support.
- g. "Price" - the price payable for the Goods and Services of Elite Safety as agreed between Elite Safety and the Client, as detailed in the Engagement Agreement, this relates to Clause 5 and/or Clause 6, 8, 20; of these terms and conditions.
- h. "Confidential Information" - information disclosed by or on behalf of the Client except to the extent the Information is in the public domain otherwise than as a result of unauthorised disclosure of which Elite Safety is aware or ought reasonably to be aware and any reproduction, excerpt, notes or compilation by Elite Safety of, based on, or incorporating, any Confidential Information.
- i. "Information" - includes any concept, idea, documentation, drawing, design, specification, development, methodology, algorithm, user manual, flow chart, research, process, procedure, diagram, plan, note, sample, software, "know-how", trade secrets, marketing and development plan, information relating to clients or projects, contract fees, pricing policy and financial information, including margin, method of production, use, operation and application; any improvement, enhancement or modification to other information; whether in written, verbal or electronic form, an original or a copy, or of a financial, business, commercial, technical or other nature. All verbal confirmation will also be confirmed in writing.
- j. "Owner" shall mean the legal owner of any hired equipment.
- k. "Work" – means the Goods and Services to be supplied by Elite Safety to the Client as set out in the Engagement Agreement and/or Estimate/Quote.

### 2. Goods & Services & Provision of Services

- a. The Goods & Services provided shall be described on Engagement Agreement, our invoices, any quotation or estimate, or any other such correspondence, including verbal, as provided by Elite Safety to the Client.
- b. A 1.25x multiplier surcharge may be applied for the following situations:
  - i. Work on Weekend Days;
  - ii. Work requested urgently (delivery time within 24 hours);
  - iii. Outside of office hours of 8am-5.30pm, for urgent call outs to site.
- c. Works on Public Holidays will incur a 1.5x multiplier charge
- d. All on site meetings, if within 20km of Elite Safety's office, are charged for the duration that the consultant is at the meeting. This is charged at the hourly rate supplied in the Engagement Agreement and/or quote or estimate.
- e. Any works more than 20km away from the Elite Safety office, are charged for the duration of the travel and the meeting at an hourly rate as supplied in the estimate. If accommodation is required for a meeting this will also be charged as per the Engagement Agreement and/or quote or estimate.
- f. Elite Safety shall not be liable for any consequential loss or damages suffered by the client due to a failure by Elite Safety to perform its obligations, where such failure is due to circumstances which are beyond Elite Safety's reasonable control including, without being limited to, industrial action, shortage of staff, access limitations, and delays caused by other parties.
- g. Elite Safety reserve the right to charge for phone calls from clients requesting advice in 15-minute increments.

### 3. Service & Conduct

- a. Where Elite Safety performs work for you, we will ensure that competent and suitably experienced personnel carry out all work, in a professional manner and in accordance with appropriate standards.
- b. **Limitation of Liability**  
While Elite Safety will make every effort to ensure a fully professional approach to all work carried out. Elite Safety cannot guarantee the results of recommendations, advice, or guidance provided, as many factors are beyond our control. To the fullest extent permitted by New Zealand law, Elite Safety shall not be liable for any loss, damage, or consequential impact arising as a result of the provision of services, except where such loss arises directly from our dishonesty, wilful neglect, or intentional failure to fulfil its duties. Where liability cannot be excluded under applicable law, our liability is limited to the maximum extent permitted by our Professional Indemnity and Public Liability insurance policies.

### 4. Confidentiality

- a. **Elite Safety agrees:**
  - i. To take all reasonable steps to preserve and protect the confidentiality of any Confidential Information;
  - ii. To use and reproduce the Confidential Information solely for the purpose of any services performed in relation to this work, or as the Client may otherwise authorise ("Permitted Purpose"); and
  - iii. Not to disclose the Confidential Information to any other person, except on a need-to-know basis for the Permitted Purpose (and provided the person to whom the information is disclosed agrees to be bound by confidentiality obligations set out in this document), or as required by law.

### 5. Price And Payment

- a. The Price shall be at Elite Safety's sole discretion, as follows:
  - i. The estimated price or rates contained in the Engagement Agreement and/or Estimate/Quote shall not alter, provided there are no variations to the Work, and provided the Client accepts the Engagement Agreement and/or Estimate/Quote in writing by the expiry date stated on the Engagement Letter and/or estimate/quote (if no date is stipulated, expiry is 7 working days following the date the Engagement Agreement and/or quote/estimate was provided).
  - ii. If the scope of Work changes between accepting the Engagement Agreement and/or quote/estimate and providing the Goods and/or Service, Elite Safety will amend the Engagement Agreement and/or quote/estimate to provide for the varied Works and a new Engagement Agreement and/or quote/estimate will be provided to the Client to accept.
  - iii. Travel may be charged from the Elite Safety office. Kilometres travelled are charged at the current Inland Revenue Department mileage rate including GST per km. Time spent traveling per day is charged at the hourly rate of the individual/s undertaking the travel.
  - iv. Where Elite Safety is required to travel and arrange accommodation, the costs of any accommodation and incidentals will be charged to the client at cost + 10% administration fee.
  - v. The use of external suppliers on your behalf will be charged to you at the suppliers prevailing rates plus Elite Safety's margin.
- b. Any training and assessment rates, charges, and terms and conditions can be found in our Training Terms and Conditions.
- c. Any on road Temporary Traffic Management, equipment hire and TTM equipment procurement charges and terms and conditions can be found in Clause 16.
- d. Prices charged to the client are confidential and shall not be discussed with other parties, including but not limited to other clients, contractors, or any other party.

### 6. General Payment Terms

- a. Payment terms shall be set out in the Engagement Agreement, but in the absence of any recorded terms, payment of Elite Safety's invoices shall be as follows:
  - i. Credit Account Customers - All invoices issued by Elite Safety for Goods and Services shall be paid by the Client to Elite Safety no later than the 20th day of the following month of the invoice date.
  - ii. Non-Account Customers - All invoices issued by Elite Safety for Goods and Services shall be paid by the Client to Elite Safety within 7 working days from the date of the invoice.
  - iii. Elite Safety may request a 50% deposit from the Client prior to providing any Goods or Services, with the remaining 50% charged after providing the Goods and Services to the Client.

### 7. Acceptance of Terms of Trade

- a. Any engagement of Elite Safety Limited's Services shall constitute acceptance of the Terms and Conditions of Trade of Elite Safety by the Client.
- b. Should more than one Client or representative of the Client enter into this agreement the Clients shall be jointly and severally liable for payment in full of the Price.

- c. Elite Safety may call upon the Client to supply a Guarantor to the Engagement Agreement and/or Estimate/Quote and where a Guarantor is included and signs the Engagement Agreement, the Guarantor personally covenants to meet all the obligations of the Client recorded in the Engagement Agreement and in these terms and Conditions so that the Guarantor will be deemed to be personally liable to Elite Safety as if the Guarantor were the principal contracting party with Elite Safety.
- d. The terms and conditions of this agreement can only be amended with the written consent of Elite Safety and shall be binding on the Client
- 8. Default and Consequences of Non-Payment**
- a. If the Client defaults in payment of any invoice when due, the Client shall pay all costs and disbursements incurred by Elite Safety in pursuing the debt including legal costs on a solicitor and Client basis including any collection agency costs.
- b. Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date payment is received at a rate of **5%** per calendar month and all interest shall compound monthly before and after any judgement until payment is received in full.
- c. Elite Safety Limited at its discretion may suspend or terminate the supply of goods and/or services should the Client, at any time be in breach of any obligation to Elite Safety Limited (including those relating to payment). Elite Safety will not be liable for any loss or damages the Client has deemed to have suffered because Elite Safety has exercised their rights under this clause.
- d. Elite Safety may call upon the Guarantor to make payment of any and all sums due to Elite Safety by the Client and nothing herein shall prevent the right of Elite Safety to issue proceedings and collect all sums outstanding from time to time from the Guarantor as if the Guarantor were the principal client with Elite Safety.
- 9. Right of Cancellation**
- a. Elite Safety Limited may cancel any contract to which these Terms and Conditions apply or cancel the delivery of Goods or Services at any time before the Goods or Services are delivered by giving written notice to the Client. On giving notice Elite Safety shall repay to the Client any sums paid in respect of undelivered or incomplete Works. Elite Safety shall not be liable for any damages or losses arising from such cancellation.
- b. Should the Client cancel any contract with Elite Safety the Client shall be liable for any loss incurred by Elite Safety (including but not limited to loss of profits) up to the time of cancellation.
- 10. Intellectual Property**
- a. Where Elite Safety has designed, drafted, or supplied written Works for the Client (including via email and in person), then the copyright in those works and documents shall remain vested in Elite Safety and shall only be used by the Client. The Client shall not distribute, or sell any works or documents, to any third party as supplied to the Client by Elite Safety without the written consent of Elite Safety.
- b. Unless approval is given in writing by Elite Safety's authorised personnel, no material originally produced by Elite Safety and amended by the client are to be supplied to external parties.
- 11. Dispute Resolution**
- a. If a dispute arises, both parties agree to first negotiate in good faith to resolve the issue.
- b. If unresolved within 14 days, any disputes arising between Elite Safety and the Client 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.
- 12. Privacy Act 2020**
- a. The Client and the Guarantor/s (if separate to the Client) authorises Elite Safety to:
- Collect, use, and retain any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
  - Disclose information about the Client, whether collected by Elite Safety from the Client directly or obtained by Elite Safety from any other party 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.
- b. Where the Client and/or Guarantors are an individual the authorities under clause 12a are authorities or consents for the purposes of the Privacy Act 2020.
- c. The Client and/or Guarantors shall have the right to request Elite Safety for a copy of the information about the Client and/or Guarantors retained by Elite Safety and the right to request Elite Safety to correct any incorrect information about the Client and/or Guarantors held by Elite Safety.
- 13. General**
- a. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the existence, validity legality and enforceability of the remaining provisions shall not be prejudiced, affected or impaired.
- b. 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 or as otherwise directed by the Court.
- c. Elite Safety shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Elite Safety of these terms and conditions.
- d. In the event of any breach of this contract by Elite Safety the remedies of the Client shall be limited to damages which under no circumstances shall exceed the contract price for Services provided and limited to the amount of monies paid to Elite Safety by the Client in part or full whichever is the lesser amount.
- e. 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 Elite Safety.
- f. Elite Safety may license or sub-contract all or any part of their rights and obligations without the Client's consent.
- g. Elite Safety 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 Elite Safety notifies the Client of such change.
- h. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- i. Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- j. The failure by Elite Safety to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Elite Safety's right to subsequently enforce that provision.
- 14. Elite Safety Limited Website**
- a. By accessing and using the Elite Safety website the Client does automatically agree to the Elite Safety website Terms and Conditions.
- b. Elite Safety Limited Website Privacy Policy - <https://elitesafety.co.nz/privacy-policy-2/>
- c. Accuracy of information - This website may provide links to non-government websites. The site owner (Elite Safety Limited) is not responsible for the currency or accuracy of content on such websites and the inclusion of such links does not imply endorsement by Elite Safety of the linked website or its provider.

## Temporary Traffic Management Planning & Design (TMP) & Auditing Additional Terms and Conditions

- 15. Liability & Indemnity**
- a. Elite Safety can only audit on the information or evidence presented by the Client. If the Client chooses or is unable to provide the required information or evidence, this may influence our ability to provide a complete review.
- b. We accept no liability for our audits or advice resulting in any financial loss or lost time.
- c. We are not responsible for the STMS' or TTM team behaviour onsite whilst undertaking the audit.
- d. Elite Safety is not liable for any delays, losses, or damages arising from factors outside its control for Traffic Management Planning, including delays in authority approvals or incorrect implementation by the Client.
- e. Elite Safety is not liable for any claims, liabilities, or damages resulting from the misuse or unauthorised use of TMP's, diagrams or other materials, and/or misuse or unauthorised implementation of TMPs.
- 16. Road Controlling Authorities**
- a. Road Controlling Authority fees are managed by the Road Controlling Authority relevant to the geographical area the Traffic Management Plan is completed for. The fees may be subject to change at any time and any fee changes are out of Elite Safety's control.
- b. Road Controlling Authority fees will be charged to you direct from the RCA unless you specify to Elite Safety to pay these on your (the client) behalf. If Elite Safety pay your RCA fees, we will then on charge you those fees and, you must meet our Fee and Payment Terms and Conditions set out in Clauses 5 and 6.
- c. Elite Safety has no influence on Road Controlling Authority additional requirements that may be requested over and above services engaged. These additional requirements may result in additional time spent by Elite Safety meeting RCA conditions on behalf of you, the client. Any additional time over and above the original Engagement Agreement and/or estimate/quote will be charged at Elite Safety's hourly rate, as specified in the Engagement Agreement and/or estimate/quote.
- d. Elite Safety will perform services with due care, skill, and diligence but does not guarantee the approval of TMPs by road-controlling authorities or engineers.
- 17. Intellectual Property**

- a. **Ownership of Materials:** All Traffic Management Plans (TMPs), diagrams, designs, concepts, and related documentation produced by Elite Safety Limited ("Elite Safety") remain the sole property of Elite Safety, unless otherwise agreed in writing.
- b. **Permitted Use:** TMPs and associated documents may only be used for the specific project or location for which they were created. They must not be copied, altered, or reproduced, in whole or in part, without prior written consent from Elite Safety.
- c. **Prohibited Use:** The Client must not:
  - i. Use any TMP's or associated materials for a project, site, or purpose other than the one for which they were prepared.
  - ii. Share or distribute the TMPs with third parties without Elite Safety's prior written approval.
- d. **Approvals and Compliance:** The Client acknowledges that TMPs and related documents must be approved by the appropriate engineer and/or road-controlling authority before implementation. Elite Safety shall not be held liable for the unauthorised use or implementation of such documents.
- f. **Survival of Rights:** This Intellectual Property clause survives the termination or expiration of any agreement between Elite Safety and the Client.
- g. Unauthorised use of TMPs or associated materials by the client or any third party whatsoever may result in liability for damages or other remedies available under New Zealand law.

## On Road TTM, Equipment Hire & Equipment Procurement Additional Terms and Conditions

### 18. On Road Temporary Traffic Management

- a. Elite Safety reserve the right to select a supplier to undertake said works as they see fit, unless specifically requested by the client. Said supplier will be selected first based on location and availability.
- b. Service charges apply from yard to site, and site to yard. This is charged at the hourly rate stipulated in the client's estimate. A minimum 4 hour charge will apply for onsite TTM Crew.
- c. Additional time (over and above 4 hrs) spent on site is charged in 15-minute increments.
- d. Elite Safety will ensure TTM teams on site operate in accordance with the clients approved temporary management plan.
- e. Elite Safety will include in the invoice to the Client, a breakdown of hours worked, number of crew onsite, cost of hired traffic management vehicles /equipment, any travel time and mileage charges.
- f. On site temporary traffic management crews may differ to the clients original booking at Elite Safety's discretion. This may be due to additional works being carried out, for safety reasons or at additional request by suppliers or contractors or Road controlling authority (RCA) requirements. Elite Safety will communicate this with the client and supply an updated estimate.

### 19. Hired Equipment

- a. Elite Safety reserve the right to select a supplier to hire required equipment as they see fit, unless specifically requested by the client. Said supplier will be selected first based on location and availability.
- b. If requested by the customer Elite Safety will arrange the delivery and installation of all hired equipment. Logistics and installation rates will be included within the hire estimate.
- c. All equipment supplied to the client shall be in acceptable condition, and fit for purpose.

### 20. Traffic Management Equipment Procurement

- a. Elite Safety reserve the right to select a supplier to procure equipment on behalf of the Client.
- b. If requested by the customer Elite Safety will arrange the delivery of the procured equipment at an additional charge. Delivery timeframes can vary due to location and stock supply and demand, it is out of Elite Safety's control to determine estimated delivery time.

### 21. Price and Payment

- a. All Temporary Traffic Management (TTM), Equipment Hire, and TTM Procurement will be estimated prior to the booking. This is an **estimate** and **not** to be used as a **quote**.
- b. Elite Safety's actual cost for completing the works may be higher or lower than the Estimate/Quote provided by the supplier. The actual cost will be determined by:
  - i. The resources used by Elite Safety over the number of hours or days of service multiplied by our rates prevailing over the period of service (which may be adjusted for such matters as complexity, urgency, importance or specialised knowledge and minimum charges) on the basis that costs will accrue each day from the time our personnel and services leave our premises until the time of their return;
  - ii. Any costs incurred by us on your behalf; and
  - iii. The cost of any goods supplied by us as part of the Work.
  - iv. Any change in delivery charges for TTM Procurement.
- c. All on road works will be estimated to the client prior to confirming booking. Confirmation of booking must be given in writing 7 days prior to said booking.
- d. **Individual customers and non-credit account holders:** The invoice is payable within 7 days of date of invoice, to Elite Safety's nominated bank account.
- e. **Credit Account holders:** A purchase order number from an authorised employee is required to secure any TTM booking. This invoice is payable upon Elite Safety's credit account terms of 20th of the following month, to Elite Safety's nominated bank account on the invoice provided.
- f. **TTM Procurement** - An invoice including delivery charges (if any) will be generated by Elite Safety and sent to the Client at the time the order for the equipment is placed, payment is to be made by due date of the invoice (please see Clause 8 for non-payment terms)
- g. Any Goods purchased by Elite Safety for the Client remain the property of Elite Safety Limited until payment is made in full. In the event of non-payment and or dispute of payment Elite Safety reserve the right to take possession of the Goods until payment is made.

### 22. Theft or Damages

- a. **On Road TTM:**
  - i. Elite Safety does not accept any equipment theft and/or damage on site as a direct result of personnel. Any claims made against said action will be discussed with said Supplier and a resolution will be supplied.
- b. **Hired Equipment:**
  - i. Elite Safety does not accept any claim of equipment damage or theft on site caused by any persons, vehicles or acts of any third party.
  - ii. All costs in relation to theft or damage will be on-charged from the equipment owner and on-charged to the client. This will be on-charged at cost, plus a 10% administration fee, unless a resolution can be made between Client and equipment owner.

### 23. Supplier / Client Relationship

- a. The client agrees to contact their supplier, being Elite Safety, for any communication regarding the on road temporary management team or hired equipment. This includes but is not limited to shifts, site changes, operation of any equipment or additional bookings.
- b. Any contact or engagement regarding provision of on road temporary traffic management or hired equipment by the Client directly to the Supplier (or any agents thereof) will not constitute any agreement with Elite Safety about any adjustment to services (or future services).