

**1. DEFINITIONS**

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Contractor,' 'we', or 'us' means Willow Creek (2018) Limited trading as Willow Creek Engineering (our successors and assigns) or any person acting with the authority of Willow Creek (2018) Limited.
- 1.3. 'Client,' 'you', or 'your' means the Client purchasing Materials or Services from us or any person acting on your behalf (including authorised agents).
- 1.4. 'Services' means all Services provided to you, including any provision of the Materials as specified in any documentation or otherwise provided under this Agreement (and where the context permits, the terms 'Materials' or 'Services' shall be interchangeable for the other).
- 1.5. 'Materials' means all Materials required to complete the Services.
- 1.6. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.7. 'Worksite' means the address or location you nominate to which the Materials or Services will be supplied.
- 1.8. 'Agreement' means these terms & conditions, as may be amended from time to time (including our privacy policy, any orders, purchases or schedules as applicable).
- 1.9. 'Amounts Owing' means any amount you owe to us, from time to time, including the Price, any interest payable, any of your liability under this Agreement and any enforcement expenses we incur in seeking payment of any Amounts Owing.
- 1.10. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.11. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Materials or Services (as applicable), and intellectual property rights, but excludes information which:
  - (a) in the public domain, other than as a result of a breach of this Agreement;
  - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
  - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.12. 'Event of Default' means failure to comply with this Agreement (including your obligations in clause 6).
- 1.13. 'Insolvency Event' means an event of insolvency or bankruptcy, including:
  - (a) the appointment of an insolvency administrator, manager, receiver or liquidator;
  - (b) any action related to winding up or making a material arrangement in relation to creditors;
  - (c) applying for any type of protection against creditors;
  - (d) being unable to pay your debts as they fall due; or
  - (e) taking or suffering any similar or analogous action in any jurisdiction due to debt.
- 1.14. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.15. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.16. 'PPSA' means the Personal Property Securities Act 1999.
- 1.17. 'CCA' means the Construction Contracts Act 2002.
- 1.18. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.19. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.20. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

**2. INTERPRETATION**

- 2.1. In this Agreement, unless the context otherwise requires:
  - (a) headings are for convenience only and do not affect interpretation;
  - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
  - (c) a reference to 'in writing' includes by email;
  - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
  - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
  - (f) a word importing the singular includes the plural and vice versa.

**3. ACCEPTANCE**

- 3.1. All orders are subject to our acceptance. We may (at our sole discretion) accept any order in whole or part by issuing an invoice for the applicable Services, delivering the Materials or Services, or otherwise confirming the order in writing.
- 3.2. You acknowledge and accept that:
  - (a) the supply of Materials on credit shall not take effect until you have completed an account application with us and it has been approved with a credit limit established for the account;
  - (b) if the supply of Materials requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
  - (c) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation; and
  - (d) this Agreement shall supersede any other document or agreement between both parties (unless expressly agreed in writing with us).
- 3.3. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not

need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Materials or Services.

- 3.4. Your acceptance of this Agreement shall continue to all future orders, purchases, or schedules (as applicable), and this Agreement will be or is deemed to be incorporated into and form part of each order, purchase, or schedule as if it were set out or implied therein in full.
- 3.5. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided they have complied with sections in Part 4, subpart 3, and all other relevant sections in Part 4 of the CCLA.
- 3.6. The Materials are provided based on specifications, information, and instructions you provide (whether written or verbal). You acknowledge that it is your responsibility to ensure that such specifications, information and instructions are detailed sufficiently to satisfy our requirements of interpretation and understanding (and once accepted, our quotation shall be deemed to interpret those specifications, information and instructions correctly). We shall not accept any liability for supplying Services contrary to your intentions (or any errors or omissions in the Materials) due to the insufficient or inadequate provision of detailed specifications, information or instructions.

**4. AUTHORISED AGENTS**

- 4.1. We are under no obligation to enquire as to the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

**5. CHANGES TO DETAILS**

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name or any other changes to your details (including changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. You acknowledge and accept that if you fail to comply with clause 5.1, you will breach this Agreement and shall be liable for any expense or loss of profit we suffer (including any Related Company).

**6. PRICE AND PAYMENT**

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. At our sole discretion, the Price shall be:
  - (a) indicated on invoices we provide to you in respect of the Services performed or Materials supplied;
  - (b) our Price at the date of delivery of the Services according to our current price list; or
  - (c) our quoted Price, which will be binding, subject to your acceptance of our quotation in writing within thirty (30) days and clause 8.
- 6.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Materials or Services will be at our standard rate according to our current Price list or at a rate notified to you.
- 6.4. The Price will be payable on the dates we determine (at our sole discretion), which may be:
  - (a) on completion of the Services;
  - (b) by way of progress payments in accordance with our agreed progress payment schedule, and such progress payment claims may include the value of any authorised variations and the value of any Materials that have been delivered to the Worksite (whether installed or not);
  - (c) due twenty (20) days following the end of the month in which a statement or invoice is sent to you; or
  - (d) seven (7) days following the date of any invoice given to you if there is no notice to the contrary.
- 6.5. Invoices may be submitted as payment claims under the CCA. A payment schedule must be provided to us within twenty (20) working days from receipt of our payment claim (and if you wish to dispute the amount of any payment claim, you must do so in accordance with Part 2, subpart 3 of the CCA).
- 6.6. At our sole discretion, we may allocate any payment from you towards any invoice that we determine and may do so at the time of receipt or any time afterwards. We may re-allocate any previously received and allocated payments if an Event of Default occurs. In the absence of any payment allocation, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests (as defined in the PPSA) in the Materials or Services.
- 6.7. You acknowledge and agree that:
  - (a) onsite repairs shall incur our current labour rates plus kilometres travelled; and
  - (b) if any machinery requires towing, any fees incurred will be at your expense.
- 6.8. We reserve the right to alter any price lists at any time. Any alterations to any Price list will be effective from the date specified and apply to all orders or purchases we accept on or after that date.
- 6.9. Payment may be made by cash, online banking, or any other method we agree to in writing.
- 6.10. Payment in any form other than cash shall not be taken to be payment for the Amounts Owing, and all ownership rights of the Materials or Services remain with us until that form of payment has been cleared and received (in accordance with clause 18.1).

- 6.11. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing.
- 6.12. You warrant that you have sufficient funds available to honour your payment obligations and will, on request, provide us with evidence verifying such funds through a letter of credit from your banking institution.
- 6.13. You shall not withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services is disputed, you agree that you will:
- perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
  - provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.
- 6.14. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

#### 7. CONSTRUCTION CONTRACTS (RETENTION MONEY) AMENDMENT ACT 2023

- 7.1. At the agreement of both parties, payment of the Price may be subject to a retainable amount, being a set amount or equal to a percentage of the Price, that becomes retention money under Part 1, section 18B(2) or section (6)(a) of the Construction Contracts (Retention Money) Amendment Act 2023 (CCRMA).
- 7.2. The retention money shall be trust property, held on trust (in accordance with Part 1, section 18C of the CCRMA) for the agreed period following completion of the Services, during which all defects are to be remedied.
- 7.3. You acknowledge and agree to:
- keep and use all retention money that applies to this Agreement in accordance with Part 1, section 18D of the CCRMA;
  - maintain accounting records of all retention money, including maintaining separate ledger records for each party and in relation to each construction contract for which money is held on trust (in accordance with Part 1, section 18FC of the CCRMA);
  - report on retention money when requested and at least every three (3) months in accordance with Part 1, section 18FD of the CCRMA until the retention money trust ends; and
  - compensate us if any unallocated withdrawals or deposits occur and lead to a loss of any retention money held for us (if Part 1, section 18EA of the CCRMA applies).

#### 8. VARIATIONS

- 8.1. The Price will be adjusted to reflect any extra cost or expense we incur due to any instruction received from you (or your authorised agent) or any action or inaction on your part.
- 8.2. We reserve the right to change the quoted Price if:
- there is any change to the Services, including: (i) any information you supply is inaccurate; (ii) there is an increase or decrease in the quantity of the Services; (iii) you request any change to plans or specifications; (iv) there is a change in the character or quality of any Material or Services; (v) there are changes to the level, line position, or dimensions of the Services; or (vi) there is any changes to the timing or sequencing of the Services;
  - additional Services are required due to: (i) the discovery of hidden or unidentifiable difficulties which are only discovered on the commencement of the Services; (ii) poor weather conditions; (iii) limitations to accessing the Worksite; (iv) incorrect measurements, plans or specifications you provide; (v) health and safety considerations (including the discovery of asbestos); (vi) prerequisite work by any third party not being completed; (vii) the lack of required utilities; (viii) remedial work needed due to existing workmanship being of poor quality or non-compliant with any relevant regulations; (ix) challenging rock barriers below the surface; and (x) iron reinforcing rods in concrete or hidden pipes and wiring in walls; or
  - the cost of labour or Materials increases due to changes beyond our control, including: (i) economic factors such as inflation or supply shortages; (ii) any taxes imposed by any Regulator; (iii) overseas transactions that may increase due to variations in foreign currency rates of exchange; or (iv) or international freight and insurance charges.
- 8.3. We will provide written notice where a variation must be completed, and you may not arbitrarily withhold agreement to undertake that variation.
- 8.4. In addition to any Price adjustment for variations, we shall be entitled to charge for our time and expenses in assessing and pricing any variation (whether or not the variation goes ahead). You shall pay a reasonable additional fee based on our regular hourly rate and expenses (including where you request us to take any steps in preparation for a variation that, for any reason, does not proceed).
- 8.5. If a variation is required by a territorial authority (including as a condition of the granting or retaining a building consent or for any part of the Services to comply with the building code), then both parties must communicate regarding the requirement of the variation. You agree to advise us whether you wish the variation to be carried out or whether an alternative arrangement can be made to avoid the need for the variation.
- 8.6. Where you request us to estimate the quantity of the Materials to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the estimate and the actual quantities provided, and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.
- 8.7. You must not negotiate any variations directly with our subcontractors or merchants without our written consent.

#### 9. PROVISION OF SERVICES

- 9.1. We will deliver the Materials or Services to the delivery location that we each agree to in writing. If the delivery location is at your premises (subject to clause 24), you will provide us (and our Personnel) with suitable access to the premises and any amenities we reasonably require to perform delivery of the Materials or Services.
- 9.2. We shall not be liable for any delay caused by:
- variations or additional work;
  - any other delays for which you are responsible (including delays caused by third parties you have engaged);
  - a failure or delay on your part in complying with your obligations under this Agreement, including (i) paying the deposit; (ii) providing proof of finance or insurance; (iii) obtaining sufficient title; (iv) obtaining consents; (v) ensuring all necessary services are available at the Worksite; or (vi) providing us with access to the Worksite for the provision of the Services;
  - delays on the part of a consenting authority or other Regulator;
  - weather conditions affecting the Services completion;
  - suspensions of the Services by either party;
  - unforeseen health and safety requirements (such as the discovery of asbestos);
  - if subcontractors or Materials are unavailable;
  - any matter covered in clause 30.8 of this Agreement;
  - the poor condition of any existing structure (or any adjoining structure);
  - dispute resolution procedures invoked by either party in circumstances that, in our reasonable opinion, make it impracticable to proceed as otherwise planned or legal proceedings relating to the Services, commenced or threatened by a third party in circumstances that make it impractical for us to proceed; or
  - any other matter outside our reasonable control.
- 9.3. Where a delay has occurred, we shall be entitled to an extension of time to complete the Services and amend the expected completion date. We shall notify you of the amended scheduled completion date within a reasonable time after the delay becomes apparent.
- 9.4. If you engage any third party, and there is a delay in the completion of the third party's services, then that delay shall entitle us to amend the scheduled start or completion date.
- 9.5. The final decision on entry onto any site will be at our sole discretion, and failure to deliver any Materials will not be deemed a breach of this Agreement.
- 9.6. You accept that the supply of Materials for accepted orders may be subject to availability, and if, for any reason, Materials are not or cease to be available, we reserve the right to substitute comparable Materials or components of the Materials and vary the Price (in accordance with clause 8). In all such cases, we will notify you before any such substitution and reserve the right to place your order on hold until both parties agree to such changes.
- 9.7. If we cannot supply the Services as agreed solely due to your action or inaction, we shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date (including storage of the Materials, if applicable).
- 9.8. If we are required to provide the Services urgently, which may require us to work outside regular business hours (including working through lunch breaks, weekends or public holidays), we reserve the right to charge additional costs unless otherwise agreed between the parties.
- 9.9. Any time we specify for delivery of the Materials is an estimate only, and we will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery. You cannot cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery (or any delay in delivery due to any event beyond our control).
- 9.10. We may deliver the Materials in separate instalments, which will be invoiced and paid as individual transactions.

#### 10. ERRORS AND OMISSIONS

- 10.1. You agree that we have no liability regarding any errors or omissions:
- resulting from any unintentional mistake made in the formation or administration of this Agreement; or
  - contained in any documentation supplied to you regarding the Services.
- 10.2. If such an error or omission occurs that is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

#### 11. DEFECTS

- 11.1. You shall inspect all Materials or Services immediately on delivery and notify us of any alleged defect within seven (7) days from the delivery date. If you do not notify us within this timeframe, the Materials or Services shall be presumed free of defects or other issues (subject to clause 15.1).
- 11.2. You shall allow us to inspect the Materials or Services to rectify any defect within fourteen (14) days from the delivery date if you believe the Materials or Services are defective and shall not engage any third party to rectify any defect before we inspect the Services. If you engage a third party to rectify any defect before allowing us to inspect the Services, then we are:
- entitled to cancel this Agreement, and all Amounts Owing shall become due;
  - not be obliged to provide any information or documentation or take any other action necessary to enable a code compliance certificate to be issued in respect of the Services; and
  - immediately discharged from any further obligation or liability regarding the Services.
- 11.3. Any period during which the Services has been suspended (under clause 28) as a consequence of your default shall not be counted when calculating a reasonable time for rectification of any defect, and any suspension shall not be construed as a permanent abandonment of the Services.

11.4.A defect does not include any fair wear and tear or damage resulting from your failure to follow our reasonable instructions.

## 12. RETURNS AND WARRANTIES

12.1.Return of the Materials will only be accepted (at our sole discretion) if:

- (a)the Materials are returned to us within seven (7) days of the delivery date;
- (b)we have agreed in writing to accept the return of the Materials;
- (c)the Materials are returned in the condition in which they were received (including all packaging material, brochures and any instructions in as new condition as is reasonably possible);
- (d)we will not accept the return of Materials that have not been stored or used correctly; and
- (e)the return of any Materials for credit may incur a restocking fee of twenty-five percent (25%) of the value of the Materials (and any additional freight costs we incur).

12.2.Subject to the conditions of the warranty set out in clause 12.3, we warrant that if any defect in any of our workmanship becomes apparent and is reported to us within twelve (12) months from the date of delivery (time being of the essence), we will either (at our sole discretion) replace or remedy the defect.

12.3.The conditions applicable to the warranty given under clause 12.2 are:

- (a)the warranty shall not cover any defect or damage which may be caused by or arise through: (i) failure on your part to maintain any Materials or Services properly; (ii) failure on your part to follow any instructions or guidelines we provide; (iii) any use of the Materials or Services for any purpose other than the appropriate applications specified on the quote, invoice or any other documentation supplied to you; (iv) the continued use of any Materials or Services after any defect becomes apparent (or would have become apparent to a reasonably competent operator); (v) fair wear and tear; or (vi) any accident or act of God;
- (b)we shall not be liable to compensate you for any delay in remedying the defect or in properly assessing your claim regarding the defective Services; and
- (c)the warranty shall cease, and we shall in no circumstances be liable (including the warranty set out in clause 12.2) if the defect is repaired, altered or overhauled by any third party without our consent.

12.4.For Materials we do not manufacture, the warranty shall be the current warranty provided by the manufacturer, and we shall not be bound by any condition, representation, or warranty other than that which the manufacturer offers.

## 13. PRIVACY ACT 2020

13.1.You authorise (us and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:

- (a)exercising our rights or performing our obligations under this Agreement;
- (b)using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
- (c)monitoring your credit file with credit reporting agencies;
- (d)registering any Security Interest under this Agreement;
- (e)direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
- (f)the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.

13.2.You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information we hold, and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.

13.3.If the Services are expected to involve sharing any data sets or other personal information, we will enter into a separate data protection agreement with you.

13.4.If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

## 14. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

14.1.Each party must keep confidential all Confidential Information, however, nothing in clause 14 prevents a party from disclosing Confidential Information:

- (a)in the circumstances provided for in this Agreement;
- (b)if the disclosure is required by law or Regulator (but only to the extent necessary); or
- (c)if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.

14.2.We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.

14.3.We own all right, title and interest (including all intellectual property rights) in the Materials or Services at all times.

14.4.Any new intellectual property created as a result of, or in connection with, the provision of our Materials or Services will be owned by us (unless otherwise agreed in writing).

14.5.If, notwithstanding clauses 14.3 and 14.4, any intellectual property rights in any of the Materials or Services vests in you, you assign those intellectual property rights

to us with effect from creation and agree to do all things reasonably required to give effect to such assignment.

14.6.You warrant that our use of any designs, instructions, plans, specifications or other technical information you provide will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor client-basis) that we may incur or suffer in the event of any such infringement.

## 15. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

15.1.Subject to clause 15.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under section 2 of the Consumer Guarantees Act 1993 (CGA)) under the CGA.

15.2.For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Materials or Services in trade:

(a)to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and

(b)it is fair and reasonable for the parties to be bound by clause 15.2.

15.3.If you are acquiring the Materials or Services to resupply the Materials or Services in trade, you undertake that you will:

(a)contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and

(b)procure that your clients and each person in the distribution chain thereafter contract out of the CGA to the maximum extent permitted by law in their contracts with clients.

15.4.For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Materials or Services in trade:

(a)to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and

(b)it is fair and reasonable for the parties to be bound by clause 15.4.

15.5.You agree to indemnify us against any expenses or losses we incur due to your breach of clause 15.

## 16. CANCELLATION

16.1.Either party may cancel the Services provided under this Agreement if:

- (a)any provision of this Agreement authorises cancellation in the circumstances;
- (b)either party have a right to cancel this Agreement under Part 2, subpart 3 of the CCLA (or any other statute); or
- (c)either party have permanently abandoned the Services before completion or has become incapable of complying with the obligations under this Agreement.

16.2.If you cancel this Agreement, you agree that we are entitled to charge for any reasonable loss of profit and without prejudice to our other rights and remedies, we may forfeit your deposit or any amount paid in advance and apply it to any Amounts Owing.

16.3.If either party cancels this Agreement, the cancellation shall take effect on the service of a notice on the other party (in accordance with clause 30.7) advising of the cancellation and the reason for the cancellation.

16.4.If either party exercises a right to cancel this Agreement:

(a)you shall pay us for all Materials delivered and all Services performed up to the date of cancellation, and if the amount owed for the Materials or Services is not apparent from the provisions of this Agreement, it shall be calculated as if the relevant Materials and Services were provided as a variation (in accordance with clause 8); and

(b)we shall provide possession of the Services to you (subject to all Amounts Owing being paid in full) and remove from the Worksite all Materials, tools, plant, equipment, and vehicles belonging to us (and our subcontractors).

16.5.We shall be entitled to cancel all or part of any order of yours which remains unperformed, and all Amounts Owing to us shall become immediately due if:

- (a)any Amounts Owing to us become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- (b)an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors, or a liquidator or similar person is appointed for you or any of your assets.

16.6.You may cancel this Agreement if we commit any of the following acts of default and we have not remedied the default within twenty (20) Business Days of receiving written notice of the default, including if we:

- (a)become insolvent or bankrupt, convene a meeting with our creditors or a liquidator or similar person is appointed in respect of our assets;
- (b)have persistently failed to proceed with the Services with reasonable diligence; or
- (c)persistently or wilfully neglected our obligations under this Agreement.

16.7.Where you cancel the Agreement, any warranty provided may be withdrawn or rendered void (including the warranty in clause 12). To avoid rendering the warranty void, you must act in good faith and consult with us regarding the options for a resolution (including obtaining our prior written consent to the cancellation).

16.8.Orders to your specifications or non-stock-list items cannot be cancelled once production has commenced.

16.9.All provisions of this Agreement intended to continue in force beyond cancellation shall continue to bind the parties (in accordance with clause 30.12).

16.10.Subject to clause 16.9, on cancellation, each party shall be immediately discharged from any further obligation or liability regarding the Services and this Agreement (without prejudice to any right or remedy arising from either party's prior breach or unlawful act occurring before the cancellation).

**17. EVENT OF DEFAULT**

- 17.1. Unless waived in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on any outstanding Amounts Owing from the due date of payment until the date the outstanding amount is paid (and interest shall compound monthly at such a rate).
- 17.2. You agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including, without limitation, administration fees, debt collection agency fees, disbursements and full legal costs on a solicitor-client basis).
- 17.3. Should you fail to pay any account, we may withhold the release of any producer statement, certification, or documentation relating to the Services provided until all Amounts Owing are paid in full.
- 17.4. You acknowledge and agree that if you are in default, we may, at our sole discretion:
- appoint a receiver in respect of your assets to take any action necessary to fulfil your obligations to us (including paying all Amounts Owing); and
  - charge you any associated costs to complete this process.

**18. RETENTION OF TITLE**

- 18.1. Ownership (including all right, title and interest) of the Materials and Services remains with us until:
- we have received all Amounts Owing; and
  - you have performed all of your obligations under this Agreement.
- 18.2. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Materials may be stored to remove any Materials. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses you incur (or any third party), and you indemnify us against any liability we may have to any third party (including full legal costs on a solicitor-client basis), as a result of us exercising our rights under clause 18.2 (except where damages, costs or losses are due to our negligence or fraud).
- 18.3. If you resell or use any Materials before ownership of the Materials has passed to you (including combining or processing the Materials), the proceeds of such sale or use will be received and held (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).
- 18.4. It is further agreed that:
- where possible, the Materials shall be kept separate and identifiable until we have received full payment and you have fulfilled all of your obligations under this Agreement; and
  - until ownership of the Materials passes to you, we may give notice in writing to return the Materials (or any accessories or components), and your rights to obtain ownership or any other interest in the Materials shall cease.
- 18.5. If any Materials are damaged where full payment has not been received, you agree that we are entitled to:
- receive all insurance proceeds paid for the Materials; and
  - deal directly with the insurance company to receive all insurance proceeds paid for the Materials we own (in accordance with clause 18.1).
- 18.6. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Materials or Services has not passed to you.

**19. SECURITY AND LIEN**

- 19.1. Subject to us providing any Materials or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien you own either now or in the future, to secure the performance of all obligations (including full payment of all Amounts Owing) under this Agreement.
- 19.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 19.1 of this Agreement (including signing any document on your behalf).
- 19.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 19 to secure the performance of your obligations under this Agreement.
- 19.4. In accordance with Part 5, subpart 5 of the CCLA, we hold a lien for work done and may sell at public auction any property that you have left for Services if any Amounts Owing are outstanding.
- 19.5. It is fair and reasonable for the parties to be bound by clause 19.

**20. PERSONAL PROPERTY SECURITIES ACT 1999**

- 20.1. You acknowledge and agree that:
- this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Materials or the Services or the proceeds of such Materials or Services; and
  - the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired personal property) you may owe us from time to time and at any time.
- 20.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Materials or Services, or a Security Interest in the proceeds of any Materials or Services (a Security Interest taken in all collateral and any proceeds of any collateral).
- 20.3. To the extent permitted by law, we each contract out of:
- sections 114(1)(a), 133 and 134 of the PPSA; and

(b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.

- 20.4. You waive your right to receive a verification statement under Part 10, section 148 of the PPSA regarding any financing statement relating to a Security Interest.
- 20.5. Nothing in this Agreement is to be construed as an agreement that: (i) a Security Interest in Materials (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; (ii) a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; (iii) a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and (iv) a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 20.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 20.7. You must provide us with information and any associated documentation we reasonably request from time to time relating to your financial status.
- 20.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Materials or Services until you have provided such Security Interests.
- 20.9. You shall unconditionally ratify any actions taken under clause 20.

**21. WORKSITE ACCESS**

- 21.1. You acknowledge and agree that it is your responsibility to ensure:
- we have clear and free access to the Worksite to deliver the Materials or undertake the Services, and we shall not be liable for any loss or damage to the Worksite (including damage to pathways, driveways, concrete, and paved or grassed areas) unless due to our negligence; and
  - access is suitable to accept the weight of laden trucks, cranes (if applicable), or other heavy equipment as necessary.
- 21.2. You (and your agents) shall be entitled to have reasonable access to inspect the Services during regular working hours, subject to the following:
- you shall provide us with notice before exercising your access rights;
  - you agree to comply with all health and safety legislation requirements, including all reasonable and relevant instructions we provide, such as wearing protective clothing when on the Worksite (in accordance with clause 24); and
  - we are not responsible for any damage done to the Services by any third party.

**22. INSURANCE AND RISK**

- 22.1. You acknowledge and agree that:
- where we supply Materials only, all risks for the Materials shall immediately pass to you on delivery, and you must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either: (i) you (or your nominated carrier) takes possession of the Materials at our address; or (ii) we (or our nominated carrier) deliver the Materials to your nominated delivery address even if you are not present at the address; and
  - if we are to supply and install Materials, we shall maintain an insurance policy for the Services until completion, at which point all risks for the Services shall immediately pass to you.
- 22.2. If we have been requested to diagnose a fault that requires disassembly or testing, all costs will be charged to you, irrespective of whether or not the repair goes ahead. If we form the opinion that the fault or machinery is uneconomical to repair, then we shall request you to authorise the commencement of any Services in writing, and you shall accept responsibility for the payment of all Materials or Services provided in repairing the fault or machinery.
- 22.3. If any piping or components are required to be repositioned at the request of any third party, you agree to notify us immediately upon any proposed changes and indemnify us against any additional costs incurred (and such variations shall be invoiced in addition to the Price in accordance with clause 8).
- 22.4. Where you have supplied Materials for us to complete the Services, you accept responsibility for the suitability of purpose, quality and any faults inherent in those Materials, and if (in our opinion) it is believed that the Materials supplied will not conform to New Zealand regulations (set out by any Regulator), then we shall be entitled to halt all Services until the appropriate conforming Materials are sourced (and you will be solely liable for all additional expenses incurred, which will be invoiced as a variation to the Services under clause 8).
- 22.5. The supply of Materials for accepted orders may be subject to availability, and if, for any reason, Materials are not or cease to be available, we reserve the right to substitute comparable Materials (or components of the Materials) and vary the Price (in accordance with clause 8). In all such cases, we will notify you in advance of any such substitution, and we also reserve the right to place your order and Services on hold until both parties agree to such changes.
- 22.6. We may, at our discretion, notify you that we require you to store Materials or tools required for the completion of the Services at the Worksite, in which case you agree to provide us with a safe area for storage and shall take all reasonable efforts to protect any Materials or tools from theft or damage (and the cost of repair or replacement of any Materials or tools that are stolen or damaged while stored at the Worksite shall be your responsibility).
- 22.7. We are only responsible for the Materials that we replace. We do not accept any liability for previous services supplied by any other third party that subsequently fails (and is found to be the source of the failure). You agree to indemnify us against any loss or damage to the Materials.
- 22.8. You warrant that any structures to which the Materials are to be affixed can withstand the installation of the Materials and are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos or defective or unsafe wiring or plumbing), we reasonably form the opinion that your

- premises are not safe for the installation of the Materials to proceed, we shall be entitled to delay the installation of the Materials until we are satisfied that it is safe.
- 22.9. You acknowledge that you must ensure safe removal of asbestos or any other toxic substances are discovered at the Worksite. You further agree to indemnify us against any costs incurred due to such discovery. Under no circumstances will we handle the removal of any asbestos product unless otherwise agreed upon in writing.
- 22.10. You agree that any advice, recommendation, information, assistance, or Services (including modifying existing structures, foundations, or Materials) supplied is provided to you in good faith, based on our knowledge and experience, and shall be accepted without liability. Where such advice or recommendations are not acted upon, we shall require you or your agent to authorise the commencement of the Services in writing. We shall not be liable for any damages or losses after the subsequent commencement of the Services.
- 22.11. If damages are caused by exceeding existing system capacities (including damages caused by power overloads, piping or any components) that are beyond our control, you shall be liable for any claims, losses, damages, or expenses however caused or arising with the repair, clean-up or any expenses that may be applicable (unless due to our negligence).
- 22.12. You acknowledge that:
- steel (including stainless steel) is a textured material and can be porous when cut or damaged. You accept that Materials made from this can rust and mark easily and that care should be taken to maintain the finish and longevity of stainless steel Materials;
  - where an anodised surface finish has been selected, slight colour variations may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available or batches of Materials. Such manufacturing standards and tolerances shall not be deemed to be a defect in the Materials or Services;
  - all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in our fact sheets, Price lists, or advertising material are indicative only and are not to be relied upon;
  - where we have performed temporary repairs: (i) we offer no guarantee against the reoccurrence of the initial fault or any further damage caused; and (ii) we will immediately advise you of the fault and shall provide you with an estimate for the repair; and
  - the Materials supplied may: (i) exhibit variations in shade, tone, colour, texture, markings, surface and finish; (ii) fade or change colour over time; (iii) expand, contract or distort as a result of exposure to heat, or weather conditions; (iv) mark or stain if exposed to certain substances (including those stated by the manufacturer); and (v) be damaged or scratched by impact.
- 22.13. We shall not be liable for any defect, deterioration or damage to the Materials:
- if you do not follow our recommendations;
  - where the Materials are stored off-site for extended periods as a result of your actions or inaction;
  - resulting from your incorrect use or installation of the Materials or any other third party engaged on your behalf; and
  - where welding, galvanising (or any other heat-related process) has caused distortion or damage.
- 22.14. You agree that, due to the nature of digital displays, we cannot guarantee that the appearance and colours of Materials (including metal and any components) shown on our website exactly reproduce the appearance or colours of the physical Materials themselves and may show some colour variations.
- 22.15. If you specifically request us to leave Materials outside our premises for collection or to deliver them to an unattended location, they are left at your sole risk, and it is your responsibility to ensure they are insured adequately. If the Materials are lost, stolen, damaged, or destroyed, you agree to be liable for the replacement cost.
- ### 23. NOTIFICATION OF SERVICES
- 23.1. You must precisely locate all unseen or underground services at the Worksite and mark the same prior to us commencing any of the Services (including electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be present on the Worksite). You agree that we are in no way liable for any repair costs or fines incurred due to damage to underground services that you do not precisely locate and mark prior to the commencement of the Services.
- 23.2. We accept no liability for unforeseen or unmarked underground services at the Worksite. If underground services are damaged despite us taking all reasonable steps to identify the underground services present, all liability and repair costs shall be your responsibility (including the obligation to seek damages from the party who installed and failed to mark the correct location of the services). Any additional Services required due to damage to underground services will be treated as a variation (in accordance with clause 8) unless due to our negligence.
- 23.3. If you request us to engage a service locator or if we require this based on industry experience, we will (at your expense) seek advice on underground services from a suitably competent and certified underground service locator, which will be based on best practices, plans, drawings, and available information. You agree to indemnify us regarding all liability and repair costs resulting from damage to underground services not precisely located and marked by the certified service locator.
- ### 24. HEALTH AND SAFETY AT WORK ACT 2015
- 24.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act and all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 24.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 24.3. Each party must consult, cooperate and coordinate activities with all other persons with a health and safety duty in relation to the same matter in providing the Materials or Services (including in connection with the delivery of the Materials or Services).
- ### 25. PLANS AND SPECIFICATIONS
- 25.1. Where you supply us with plans, specifications, or other technical information (such as CAD drawings or any other electronic software that provides detailed plans and specifications), you are responsible for providing accurate information, and we are entitled to rely on it.
- 25.2. If you give technical information relating to the specifications of the Materials required to complete the Services, it is your responsibility to verify the accuracy of the technical information or specifications before we place an order based on these measurements or specifications. We accept no responsibility for any loss, damages, or costs due to your failure to verify the accuracy of the technical information or specifications.
- 25.3. You acknowledge that all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in our fact sheets, price lists, or advertising material are approximate. You shall not be entitled to rely on such information, and any use of such does not constitute a sale by description and does not form part of this Agreement unless expressly stated as such in writing.
- 25.4. If there is any discrepancy between the drawings and the specifications, precedence will be determined based on the election of authority agreed to by both parties and recorded in writing. If no election of authority has been made, you acknowledge and agree that:
- figured specifications take precedence over scaled specifications;
  - large-scale specifications take precedence over small-scaled specifications;
  - amended drawings take precedence over older drawings; and
  - all drawings and specifications are subject to any building consent.
- 25.5. We are not responsible for any errors in the Materials or Services or additional expenses you cause by supplying inaccurate information.
- ### 26. STATUTORY COMPLIANCE AND CONSENT
- 26.1. You agree to obtain (at your expense) all approvals, consents and licences that may be required for the Services (including consents, approvals or reports required before and after the commencement of the Services).
- 26.2. We shall be responsible for providing any compliance certificate or producer statement on completing the Services.
- ### 27. CONSTRUCTION CONTRACTS ACT 2002
- 27.1. We reserve the right to suspend the Services (in accordance with Part 2, subpart 4 of the CCA) by providing five days written notice if:
- a claimed amount is not paid in full by the due date;
  - if we have issued a payment claim and no payment schedule has been provided; or
  - a scheduled amount is not paid in full by the due date for its payment, even though the payment schedule you provide indicates a scheduled amount that you propose to pay us.
- 27.2. If we suspend the Services under clause 27.1, you acknowledge and agree that:
- the suspension of the Services is not in breach of this Agreement;
  - the rights and obligations in this Agreement shall remain in full force and effect;
  - we are not liable for any loss or damage you suffer (or by any third party claiming through you);
  - we are entitled to an extension of time to complete the Services;
  - the suspension does not affect any rights that would otherwise have been available to us under Part 2, subpart 3 of the CCA; and
  - we may exercise any rights for payments or adjudication of disputes under Part 2 and Part 3 of the CCA.
- ### 28. SUBCONTRACTORS AND THIRD PARTY SUPPLIERS
- 28.1. We may subcontract any portion of the Services but may not assign or sublet the whole of the Services without your written consent.
- 28.2. We, at all times, shall be responsible for:
- our Subcontractor's services;
  - ensuring that our subcontractors have appropriate insurance in place;
  - obtaining applicable warranties, guarantees, certificates and records of work required from our subcontractors; and
  - taking all reasonable steps to ensure our subcontractors comply with health and safety legislation regarding the Services (in accordance with clause 24).
- 28.3. If you request and authorise us to arrange the provision of Materials or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Materials or Services to you directly by a third party supplier. You agree to pay all Amounts Owing under this Agreement if we arrange any supply of Materials or Services provided directly to you by a third party supplier. We offer no warranty regarding the quality of the workmanship of the third party supplier (including if their recommendations are appropriate or accurate).

**29. LIABILITY**

- 29.1. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit you suffer arising out of our breach of this Agreement (including any unintentional misrepresentation made to you regarding any of the Materials or Services).
- 29.2. To the extent permitted by law, our liability shall not exceed the Price of the Services provided under this Agreement.
- 29.3. To the extent permitted by law, our total liability under or in connection with this Agreement and the Materials or Services is limited to, at our option:
- (a) in the case of Materials, any one or more of the following: (i) the replacement of the Material(s) or the supply of equivalent Material(s); (ii) the repair of the Material(s); (iii) the payment of the expense of replacing the Material(s) or of acquiring equivalent Material(s); or (iv) the payment of the expense of having the Material(s) repaired; or
  - (b) in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.
- 29.4. If, notwithstanding clause 28, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid to us for the applicable Materials or Services; or (ii) the actual loss or damage you suffer; and
  - (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, customers, opportunities or loss of or damage to reputation.
- 29.5. The limitations and exclusions on liability in this clause 29 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.
- 29.6. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:
- (a) for the acts or omissions of any third party;
  - (b) any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or
  - (c) to any third party.

**30. GENERAL**

- 30.1. **Governing law:** This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.
- 30.2. **Entire Agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 30.3. **Priority:** To the extent of an inconsistency between:
- (a) this Agreement;
  - (b) all other schedules to this Agreement;
  - (c) any privacy or data agreement (if applicable); and
  - (d) the order of priority above will apply (with (a) having the highest priority).
- 30.4. **Subcontracting:** We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.
- 30.5. **Assignment:** You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign all or part of the Amounts Owing to any other person.
- 30.6. **Amendments:** Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.
- 30.7. **Notices:** Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.
- 30.8. **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).
- 30.9. **Severability:** If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be amended, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.
- 30.10. **Waiver:** A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 30.11. **Termination:** Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.

- 30.12. **Survival:** Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.
- 30.13. **Rights of third parties:** This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 30.14. **Relationship:** We will provide Materials or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.
- 30.15. **Non-exclusive:** This Agreement is not exclusive, and you agree that we may provide any Materials or Services to any other person without restriction.
- 30.16. **Counterparts:** This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), constituting one instrument.