

## TERMS OF TRADE

**1. How these Terms Apply** You are taken to have exclusively accepted and are immediately bound, jointly and severally (where there is more than one purchaser), by these terms and conditions of trade when you:

- a. place an Order for any Goods or Services from us; and/or
- b. accept delivery of any Goods or Services from us; and/or
- c. permit entry by us to your Site to perform Services or install any Goods; and/or
- d. issue a purchase order to us to confirm an Order.

**2. Parties to this Contract** This Contract is between **COMPLETE GAS SERVICES LIMITED (NZBN 9429046958020)** and you, the named customer in the Order, in respect of the Goods and Services.

## DEFINITIONS

**3. Definitions** The following definitions apply in this Contract:

- a. **“Business Days”** Any reference to ‘Business Days’ in these terms means a day on which banks are ordinarily open in New Zealand and excludes a Saturday, a Sunday or a public holiday. Any other reference to a ‘day’ shall mean a calendar day.
- b. **“Contract”** means these terms and conditions together with:
  - (i) any Order documentation; and
  - (ii) all and any plans, drawings and specifications (including any variations to such); and
  - (iii) any other document or amendments expressed to be supplemental to this Contract.
- c. **“Goods”** includes any materials, products, (including component parts) or equipment supplied in connection with any Order; and
- d. **“Order”** means any quotation, cost estimate, work order, statement of work, online booking, phone booking, invoice and any other documentation setting out our scope of Services or order for Goods.

- e. **“Site”** means the place or places where the Services are to be performed by us or Goods are to be delivered. This includes any Site under the direction of a head contractor.
- f. **“You”** Means the purchaser buying the Goods and Services as specified in Order. If the purchaser comprises more than one person, each of those persons’ liability and agreement is joint and several.
- g. **“Us”** Any reference to “us”, “we” or “our” includes any contractor, employee, assignee, transferees or approved subcontractor that we use.

## OUR OBLIGATIONS

- 4. Our Services** All and any Services or works performed including consultation services, heating or drainage system design, repair, investigation, testing, maintenance and installation services or any other service described in our Order shall be performed in accordance with industry best practice, with due skill and care and in a competent manner.
- 5. Goods** These will be fit for purpose for the proposed use and unless agreed with you, will be new.
- 6. Subcontractors** Either we or our approved subcontractors will perform the Services for you.
- 7. Updates on Timing** We will advise you of any anticipated delay to provide a Service or procure Goods.
- 8. Certificate of Compliance** If required by law, we will give you any certificate or similar document as needed to confirm the works are completed and/or tested to specified requirements.
- 9. Work May be Performed in Instalments** We may perform the Services and related works in instalments on different dates.

## TRADE CUSTOMERS

- 10. Trade Credit** Where you are a commercial or industrial customer and you wish to be granted a credit line with us, the following applies:
  - a. that the supply of Goods or Services on credit may be subject to the requirement to complete a credit application; and
  - b. we may request a personal guarantee from one or more directors; and

- c. if the supply of Goods or Services requested exceeds your credit limit and/or the account exceeds the payment terms or is in arrears, we reserve the right to refuse to order Goods or perform Services at our sole discretion.

## CUSTOMER OBLIGATIONS

- 11. Authority for Approval Decisions** You must nominate a single individual with authority to give instructions or approval to us. Where you are working with a professional consultant that you wish to delegate approval and authority to, you must provide us with a contact name, status and basis on which approval or instructions can be accepted by us.
- 12. Accuracy of Plans, Drawings and Specifications** You are responsible for the accuracy of any plans, drawings or specifications that you provide to us. Where any changes are made to such documents after you confirm an Order, you must inform us immediately.
- 13. Consents** You must make your own enquiries relating to the requirement of any consents required to enable us to perform the Services. You must arrange for all such consents to be obtained at your sole cost unless we have expressly agreed to perform this as your agent.
- 14. Code Compliance Certifications** You are responsible for arranging all and any applicable code compliance certification for the works and Services at your sole cost **unless we have expressly agreed to perform this as your agent.**
- 15. Separate Contractors** You are responsible for arranging all and any other separate contractor that is required as part of your project. You acknowledge that we shall only manage our nominated subcontractors.

## SITE PREPARATION AND ACCESS

- 16. Site Preparation Works** You must complete the following works at your cost in advance of us commencing the Services. These include, but are not limited to:
  - a. **Boundary Markings** where our Services require boundaries to be followed, all survey pegs and boundary markings must be clearly visible and present; and/or
  - b. **Trenching** where you require us to lay services or drainage or ducting/pipe work underground, you must provide open trenches at a depth to meet our reasonable requirements; and/or

- c. **Removal of obstructions** you must clear the Site access and work areas; and/or
- d. **Interior clearance** where our Services require access through the interior of a dwelling or structure, the area is made clear and safe for performance of the Services; and/or
- e. **Excavation works** all excavation, site scraping, downpipes, dewatering, ground levelling and other necessary groundworks have been completed and performed; and/or
- f. **Other preparatory works** any other preparatory work that we reasonably notify you to perform in advance of the Services.

- 17. Underground Services Detection** Where we will perform Services that may be in and around underground services, you must arrange the following at your own cost and expense **unless we specifically include this in our scope:**

- a. copies of up-to-date plans showing underground services locations; and
- b. cable locations and mark-out to be performed at Site by qualified services location personnel; and
- c. arrange and meet costs (if applicable) of a stand-over service where we identify the Site as high-risk of underground services strikes.

- 18. Site Induction** Where you are a commercial or industrial customer, you must provide us with all required site induction requirements and do all things to assist us to attend, complete and perform your site inductions. This includes, but is not limited to the following:

- a. any applicable permit to work process and any related documentation to be signed by us; and
- b. time sheeting and Site sign-in process applicable to your site; and
- c. prohibited items list applicable to the site or area in which we are to perform Services; and
- d. drug and alcohol testing requirements applicable to the Site including frequency; and
- e. any other information or requirement specific to your Site.

## PRICE AND PAYMENT

**19. Prices** The price for our Goods and Services shall be comprised of one or more of the following:

- a. a quoted fixed price; or
- b. a cost estimate only; or
- c. a charge-up rate based on time and materials; or
- d. a schedule of rates; or
- e. a call-out fee.

**20. Charge Up Services** Where the cost to perform the Services are estimated on a time and materials basis, you shall be invoiced for the actual hours incurred to perform the Services up to the date of the applicable invoice together with the actual volume or quantity of Goods and materials required to meet the scope of Services.

**21. Deposits** Our Order will state if a deposit is required to be paid. We reserve the right not to place an order for Goods until you have paid a deposit.

**22. Goods** The following applies to the price and payment for Goods:

- a. **Prices are Indicative** All prices for Goods are issued as an indicative price and are not final until your Order is confirmed. Pricing is subject to cost fluctuations from wholesaler or manufacturer; and
- b. **Delivery or storage fees may apply** Any applicable delivery or anticipated storage costs (where Goods are ordered in advance) may apply.

**23. Call Out Fees** Our call-out services are subject to the following payment terms:

- a. **Minimum Fees Apply** a minimum hourly rate or call-out rate current as at the date of the Order shall be charged; and
- b. **Out of Hours and Weekends** out-of-hours, weekend or public holiday rates may apply and may incur a higher rate than our standard hourly rate or call-out rate; and
- c. **Travel** we may add travel costs in addition to our call-out fees; and
- d. **Fault Detection** where the call-out requires us to diagnose a fault that requires investigation, disassembly and/or testing, all costs plus spare

parts, materials or components to achieve the temporary fix or repair involved shall be chargeable whether or not the system or appliance develops a subsequent fault; and

- e. **No Show Fees** where we attend your call-out and cannot access the Site, the full call-out fee plus applicable travel costs shall apply.

**24. Commercial and Industrial Services** The following applies to the price and payment for Services where you are a commercial or industrial customer:

- a. **Schedule of Rates** all pricing and rates for Services are issued against any schedule of rates supplied with this Contract (as adjusted from time to time) or otherwise supplied to you; and
- b. **Different Rates May Apply** you acknowledge that personnel, service types and machinery or equipment are subject to different rates; and
- c. **Site Induction Fee** you acknowledge there may be an initial establishment fee payable to induct our personnel to your nominated Site(s). Additional establishment fees are chargeable per project or scope of work where there is more than one Site. Refresher fees may be payable if we regularly attend your Site(s); and
- d. **Stand Down Fees** Where we arrive to Site as scheduled and we cannot access the Site after a reasonable waiting time, we reserve the right to leave the Site and you shall be charged a stand down fee equivalent to the full daily rate for all personnel deployed to your Site.

## INVOICING

**25. Amounts Owning Payable on Due Date** All amounts specified in an invoice will require payment on the due date specified in the invoice ("**Amounts Owning**").

**26. Invoice Frequency** We may invoice at any one or more of the following frequencies:

- a. on completion of your Services; and/or
- b. on ordering of Goods; and/or
- c. at a specific frequency (weekly, fortnightly or monthly) for actual hours and materials costs incurred ("**Charge-Up**"); or
- d. on completion of specified milestones or stages of the works or Services; or

e. as otherwise stated in our Order.

**27. Retentions** No retentions shall apply unless expressly agreed in advance. Where retentions are agreed to, the applicable regime in force under the Construction Contracts Act 2002 (CCA), in respect of retentions shall apply.

**28. Payment Terms** Our invoice will state our due date for payment, where not stated it is **7 (seven) calendar days** from the date of invoice.

**29. Credit Card Fees** We reserve the right to add reasonable merchant fees, costs and expenses for processing credit or debit card transactions if you choose to pay by this method.

**30. No Deferment of Final Balance** You confirm and acknowledge that you cannot defer the payment of the final balance to be later than the due date stated in an invoice unless we agree to this as a Variation.

**31. No Set Off or Deduction Payment of Amounts Owning** Amounts Owning which are due and payable must be made without set-off or deduction of any kind.

**32. Invoices Issued as Payment Claims** Where this is a "construction contract" as defined in the CCA and we have elected to issue an invoice as a payment claim, the regime set out in Part 2 of the CCA shall apply.

**33. Overdue Amounts Owning** Where you do not pay an Amount Owning by the due date stated in an invoice, this immediately becomes an "**Overdue Amount Owning**". After a period of **5 (five) Business Days**, we shall have the right to apply **default interest at a rate of 5% per month on the Overdue Amount Owning** (or such rate published on our invoices if different). This shall be calculated daily and compound monthly at that rate if we elect to do this. This applies before and after any judgment (if applicable).

**34. Debt Collection or Recovery Costs** If an Overdue Amount Owning remains unpaid for **14 (fourteen) Business Days or more**, we reserve our rights to engage the services of a debt collection agency or solicitor to take proceedings to recover the Overdue Amount Owning. You will be liable for the costs incurred by us in the collection of any unpaid amounts including but not limited to legal costs, debt collection fees and internal administration fees.

**35. Administration Fees** Where we perform any additional actions to recover any monies owed by you, we reserve the right to apply reasonable administrative fees **up to \$50 per overdue invoice** for phone calls, texts, emails and in-person visits to follow up and recover any

Overdue Amount Owning in addition to any costs or expenses stated in any clauses above.

## VARIATIONS

**36. Variations to Price or Time** We reserve the right to issue a Variation Order to change the price or extend the time to supply Goods or to complete the Services in any one or more of the following circumstances:

- a. **Poor accuracy of plans** where any additional measurements are required to be obtained by us to verify the accuracy and suitability of any plans or drawings supplied to us by you (or any representative) after you have supplied us with consented or approved plans; and/or
- b. **Revisions to plans, drawings or specifications** where a change to any plans, drawings or specifications is made by you or any representative authorised by you after the date you place an Order; and/or
- c. **Site extension or change** where an extension to the Site area or change to the Site location is requested; and/or
- d. **Goods selections changes** where a change to selection of Goods is required or requested after you have confirmed your Order; and/or
- e. **Change to commencement date** where a change to the date for commencement agreed upon in our Order is requested; and/or
- f. **Site Preparation works incomplete** where we are delayed or where we have to perform additional works to manage, assist with or co-ordinate any site preparation works which form your Customer Obligations; and/or
- g. **Undetected or unforeseen issues** where the Services are required to be suspended or extended due to the discovery of hidden or unidentifiable difficulties (noting that we reserve our right to exercise our reasonable judgment as to what constitutes "hidden or unidentifiable difficulties" based on our industry expertise). These include, but are not limited to:
  - (i) poor weather conditions; and/or
  - (ii) limitations to accessing the Site to perform the Services; and/or

- (iii) prerequisite work by a third party not being completed to prepare or erect the surfaces to be worked on; and/or
- (iv) obscured building defects, latent defects that affect the suitability or the structural integrity of the surface to be worked on; and/or
- (v) hidden pipes, cables, or wiring that affect the suitability of the surface to be worked on; and/or
- (vi) roofing materials not suitable or structurally sound to accept load of any roof mounted heating system equipment; and/or
- (vii) existing plumbing, gas fitting or associated services do not meet required clearances; and/or
- (viii) testing (e.g. gas tightness checks) requires a delay to commence Services or requires additional Site preparation works; and/or
- (ix) underground services encountered that were not detected by mark-out plans, cable location, pot holing or hand-digging and which affect the performance of the works; and/or
- (x) encountering hazardous waste or contaminated ground, soil, material or waste where we are performing underground works.

- h. **Costs fluctuations** where costs or expenses relating to supply of Goods, or our materials increases beyond our control from the date of issue or acceptance of an Order and we could not reasonably foresee such increases; and/or
- i. **Materials substitutions** where there is a requirement for us to substitute one or more Goods selections and the substitute agreed upon is a higher cost to the price indicated or estimated in our Order; and/or
- j. **Any other impacts** where there is a requirement for us to extend the time or cost it takes to supply the Goods or complete the Services due to the impact of any other changes which are not listed above but which we deem in our reasonable opinion are a Variation.

**37. All Rights Reserved to Decline a Variation** We reserve our right to decline to treat this as a Variation. In some circumstances, we may elect to treat the Variation request as a new Order.

**38. Written Variations** We shall supply you with a written Variation Order stating the changes to the Order, how the price change has been or will be calculated, any extension of time required and state any additional

customer obligations to accommodate the Variation. This will be supplemental and in addition to the Order and forms part of this Contract.

**39. Verbal Variations** Where necessary due to time constraints, you agree we may contact you to inform you of a Variation event by phone or in person if you are on Site. You further acknowledge and agree that in these circumstances, you confirm that we are entitled to invoice any additional sums as if it were a written Variation Order.

## INTELLECTUAL PROPERTY

**40. Our Intellectual Property** Where we have prepared plans, designed a system, prepared a schedule of works, or created any designs ("**Our Intellectual Property**") for you, then the copyright and all intellectual property rights in all Our Intellectual Property shall remain vested in us, and shall only be used by you at our sole discretion.

**41. Supplied Plans and Designs** You warrant that all designs, specifications, or instructions you supply to us will not cause us to infringe any patent, registered design or trademark in the execution of the works and Services, and **you agree to indemnify us against any action taken by a third party against us in respect of any such infringement.**

**42. No Commercial Use of Intellectual Property** Under no circumstances may Our Intellectual Property be used without our express written approval. You shall not be entitled to make use of any of Our Intellectual Property for replication or commercialisation purposes.

## WARRANTIES

**43. Warranty Period** We offer a 12-month warranty on our Services. Goods are subject to the manufacturer warranty offered, notified to you at the time of selection of your Goods.

**44. Consumer Guarantees Act** If you are a customer in trade or business, the provisions of the Consumer Guarantees Act 1993 (**CGA**) shall not apply. Otherwise the CGA will apply.

**45. Health & Safety at Work Act 2015** We shall comply with meeting our obligations for health and safety laws in the workplace including where we are acting as a sub-contractor for third party head contractor.

**46. Residential Building Work Implied Warranties** Nothing in this Contract shall affect any implied warranties relating to defects under ss 362l to 362k of the Building Act 2004 and this Contract is subject to the exceptions in that Act.

## DEFECTS IN GOODS AND SERVICES

**47. Defective Goods** You must inform us in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quoted specifications of Goods. The following shall apply:

- a. **Inspection** we are entitled to inspect the Goods within a reasonable time to determine if a defect is present; and
- b. **Remedies** We can choose (at our sole discretion) to either replace or repair the Goods; and
- c. **Original Manufacturer Warranty** We shall liaise with any original equipment manufacturer to procure replacement Goods under warranty or arrange a repair at their expense; and
- d. **No refund** We are not obliged to provide a refund for defective Goods unless required by law.

**48. Services** You must inform us within **twelve (12) months** following practical completion of the Services of any defect in our workmanship for Services. The following shall apply:

- a. **Inspection** we are entitled to inspect the workmanship (with an independent third-party where we choose this) within a reasonable time to determine if a defect is present; and
- b. **Remedial Works** If a defect is present, we shall either remedy the defective workmanship by a re-performance of the Services or agree an alternative remedy with you; and

## UNUSED OR UNWANTED GOODS

**49. Return of Unused or Unwanted Goods** Returns of Goods that are not defective will only be accepted at our sole discretion.

**50. Non-Stocklist Items or Special Orders** Non-stocklist items or Goods made or ordered to custom specifications are under no circumstances acceptable for credit or return.

## EXCLUSIONS OF WARRANTIES

**51. No Warranty for Temporary Repairs** You accept and acknowledge that where we perform a temporary repair, we offer no warranty against the reoccurrence of the initial fault, subsequent faults or failure of the system or appliance.

**52. No Warranty Drain Unblocking** You accept and acknowledge that where we unblock a drain where there are existing breakages, tree root entry, ducting collapse or other adverse impacts we offer no warranty against the reoccurrence of the initial fault or subsequent faults or blockages.

**53. Exclusion of Warranties** Any warranty or guarantee owed by us to you under relevant laws or under this Contract will not apply where:

- a. you have not informed us of the defect within the time frame stated in this Contract (*Defects in Goods and Services*); and/or
- b. you have supplied materials, components, fittings, parts or equipment; and/or
- c. accepted industry tolerances are present or detected; and/or
- d. the fault or defect is a result of:
  - (i) something done by you or someone else, and not by us or our approved contractors; and/or
  - (ii) you or your representatives not maintaining any resulting structure, system or dwelling (where applicable) in a sound and reasonable condition in such a way that it caused the defect; and/or
  - (iii) something beyond human control that occurred after completion of our Services or works, for example an extreme weather event or natural disaster or natural event such as an earthquake, lahar or tsunami that causes the defect; and/or
  - (iv) any part of the Goods installed as part of the Services being misused, abused, neglected, or damaged after installation; and/or
  - (v) the Goods not being maintained in accordance with any care or guarantee documents supplied by us to you; and/or
  - (vi) the Goods being repaired, modified, reinstalled, or repositioned by anyone other than us or our approved contractors.

**54. Manufacturer Warranty Claims** If Warranty Notice Period has ended and there is a manufacturer product warranty still available for any component part of the Goods included as part of the Services, you must liaise with the manufacturer for the duration of any guarantee period offered by them.

## RISK

**55. Risk in Goods Passes to You on Completion** All risk of damage or loss to any Goods shall pass to you on delivery of the Goods or completion of the Services (where Goods have been installed at your Site as part of the Services). The responsibility to insure those Goods shall pass to you.

**56. Risk of Plant, Equipment or Goods left at Site** Where you are providing the Site and offer storage facilities for our plant, equipment or any Goods, you must ensure this is adequately secure.

## TITLE TO GOODS, PLANT AND EQUIPMENT

**57. Retention of Title to Goods** We own the Goods (if any) supplied to you until you have paid for them in full. No beneficial or equitable ownership in the Goods will pass to you until full and final payment of the total price for the Goods has been received by us, pending which you hold the Goods as trustee and agent for us.

**58. Right to Enter Site to Seize Goods if there are Amounts Owing** If you fail to comply with this Contract in relation to payment of Amounts Owing then we may enter the Site to seize possession of the Goods and retain, sell or otherwise dispose of such Goods. By entering into this Contract, you acknowledge and agree that you grant us or our agents or approved contractors an unrestricted right and licence to enter the Site without notice to identify and remove the Goods that we still own.

**59. Title to Plant, Machinery and Equipment** All title to any plant, machinery and equipment used to perform the Services and which may be left at the Site during the performance of the Services remain our exclusive personal property and no rights, title or interest shall pass to you.

## PERSONAL PROPERTIES SECURITIES ACT 1999 (PPSA)

**60. This Contract is a Security Agreement** You accept that this Contract constitutes a security agreement for the purposes of the PPSA.

**61. Retention of Title creates a Purchase Money Security Interest** You agree that clause (*Retention of Title to Goods*) grants us a Purchase Money Security Interest (as defined in the PPSA) in all present and after acquired Goods as security for payment of the purchase price for the Goods until such amount is paid in full.

**62. Our Right to Register a Financing Statement** You consent to us effecting a registration of a financing statement in respect of the security interest created by this Contract on the Personal Property Security Register (PPSR) under the provisions of the PPSA. Where we

have rights in addition to those in Parts 9 of the PPSA, you agree that those rights shall continue to apply.

**63. Waiver of Your Rights under the PPSA** You waive the following rights under the PPSA:

- a. **To receive a verification statement** you waive the right to receive notice of a verification statement under s148 of the PPSA in relation to any registration we make on the PPSR to secure our interest over the Goods; and
- b. **Notice rights** you further agree that you waive the rights under ss114(1)(a), 116, 120(2), 121, 125, 129 and 131 of the PPSA as they relate to notices to you regarding our rights to remove our Goods and re-sell these. To the extent permitted by law this Contract excludes any other provisions of the PPSA which may be excluded in our discretion, and which would otherwise confer rights on you.

**64. What you Must Do to Assist with a PPSR Registration** You undertake to:

- a. promptly do all things, execute all documents and/or provide any information which we may reasonably require to enable us to register a financing statement or charge on the PPSR; and
- b. not consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the Goods without our prior written consent.

**65. Right to Enter Site** You irrevocably grant us the right to enter your Site without notice, and without being in any way liable to the you or to any third party, if we have the rights to exercise any of our rights under section 109 of the PPSA in respect of our Goods. You shall indemnify us from any claims made by any third party as a result of such exercise. Any costs and expenses in the performance of using our rights under s109 of the PPSA shall be added to any Amounts Owing.

## SUSPENSION AND TERMINATION FOR DEFAULT

**66. Suspension of Services for Overdue Amounts Owing** If there is an Overdue Amount Owing and such default continues for **five (5) Business Days** then we shall be entitled to immediately suspend the Services without notice. Where this is a commercial "Construction Contract" as defined under the CCA, s24A of the CCA shall apply.

**67. Termination of Services for Default** Without prejudice to our other remedies at law, we reserve our rights to terminate this Contract (which includes any part of the

Services that remain unfulfilled), if any one or more of the default events listed below occurs:

- a. **Deposit Not Paid** you fail to pay a Deposit to confirm acceptance of your Order; and/or
- b. **Amounts Owing Not Paid** you fail to pay any sums that have become an Overdue Amount Owing; and/or
- c. **Trade Account in Arrears** you are a trade customer, and you are in breach of any terms of your credit application; and/or
- d. **Insolvency** you become insolvent or bankrupt, convene a meeting with your creditors or make an assignment for the benefit of your creditors or a receiver, manager, or liquidator (provisional or otherwise) or similar person is appointed in respect of you or your business or its assets; and/or
- e. **No Access to Site** we or our approved contractors are denied access to or are unable to access the Site to carry out the Services for more than **ten (10) Business Days**; and/or
- f. **Unsafe Site** where we or our approved contractors assess that the Site is unsafe and to continue to work at the Site would breach applicable health and safety legislation and you cannot or will not make the Site safe.

- b. Where we can return the Goods to the supplier, any restocking fee charged to us by the Supplier shall be deducted from your Deposit; and
- c. In all cases, an administration fee of 15% of the Deposit amount shall be retained by us.

#### AMOUNTS PAYABLE ON TERMINATION OR CANCELLATION

**71. Amounts Owing up to Termination Date** All Amounts Owing for Goods or Services (as applicable) shall become immediately due and payable if either party exercises their rights to terminate or cancel this Contract, including (but not limited to):

- a. **Partly Performed Services** any part-performance of Services completed up to the date of termination; and/or
- b. **Goods** the price for Goods already ordered as at the date of termination which cannot be returned to a supplier or are non-stocklist items or are custom orders; and
- c. **Restocking Fees** any reasonable restocking fees to return Goods, cancel orders for Goods or liaise with suppliers regarding Goods.

#### LIMITATION OF OUR LIABILITY

**72. Exclusion of Our Liability** To the fullest extent permitted by law, we exclude all liability to you for:

- a. **Loss or Expenses** any direct or indirect claims, expenses, losses, damages and costs (including any incidental, special and/or consequential damages or loss of profits, loss of anticipated savings or loss of expenses suffered or incurred by you resulting (either directly or indirectly) in connection with the Services; and
- b. **Delays to Performance of Services** any claims, losses, damages, and costs (direct, indirect, or anticipated) incurred by you for the Services not taking place as planned. If the Services are not completed by the anticipated or proposed date advised by us, you acknowledge and agree that you shall not be entitled to any damages (liquidated damages, or any other type of damages or costs) in respect of the delay; and
- c. **Damage to Underground Services** Losses or fees or fines incurred due to damage caused by us to underground services where you were responsible

#### CANCELLATION

**68. Our Rights to Cancel this Contract** We may cancel an Order at our discretion. We shall provide you with at least **ten (10) Business Days' notice of such cancellation**. We shall not be liable for any loss or damage whatsoever arising from such cancellation.

**69. Your Rights to Cancel this Contract** You may choose to cancel an Order provided you inform us in writing with no less than **ten (10) Business Days' notice from acceptance of the Contract**. You may not elect to cancel after we have commenced Services.

**70. Deposit Refunds** Where you have paid us a Deposit and you elect to cancel this Contract, the following shall apply:

- a. A deposit is not refundable if it covers the entire cost for Goods ordered to your specifications and we cannot cancel the order or return Goods to the supplier; or



for the appropriate mark-out or location of such underground services.

**73. When Limitations of Liability Cannot Apply** These clauses do not limit our liability to the extent that it cannot be limited at law or arises out of or in connection with any wilful default, fraud or criminal conduct by us.

**74. Limit of Liability** Where we are found to be liable to you, our total aggregate liability to you arising out of or in connection with this Contract whether under any indemnity, in contract or tort (including negligence) by statute or otherwise at law or in equity **is limited to the total price of the Goods or Services or the actual direct costs incurred by you (whichever is the lower amount).**

## DISPUTES

**75. Details of the Dispute must be Supplied** If you or we consider that a dispute has arisen in relation to any matter governed by this Contract, that party must give the other party written notice outlining the basis of the dispute (**Dispute Notice**).

**76. Dispute Resolution** If the dispute is not resolved by discussion, meeting and/or other informal means within **ten (10) Business Days** of the date of the Dispute Notice, either party may seek dispute resolution via the adjudication process where this is a “construction contract” as defined under the CCA or via mediation for all other contract types.

**77. Obligations Continue** If there is a Dispute, each party will continue to perform its obligations (including paying Amounts Owed) under this Contract as far as practical given the nature of the dispute.

**78. Taking court action** Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in this clause, unless that party requires urgent relief from a court.

**79. Interlocutory Relief** Nothing in this Contract shall affect either party’s right to seek urgent interlocutory relief.

**80. Costs and Expenses** Each party will pay its own costs of dispute resolution under this Contract.

## PRIVACY

**81. Use of Personal Information** You authorise us and our agents to collect, use, retain and disclose “personal information” (as defined in the Privacy Act 2020) about you and your personnel that you or they provide to us for the following purposes:

- a. **Credit checks** assessing creditworthiness and exercising our rights and/or performing our obligations under this Contract; and
- b. **Marketing** 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
- c. **Credit reporting** using the services of credit reporting and debt collection agencies and you consent to us disclosing personal information (including any information about default and repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services; and
- d. **PPSA registration** registering any Security Interest under this Contract; and

**82. Related Companies** the use or transfer of personal information to a Related Company (as such term is defined by Companies Act 1993) in connection with the performance of our obligations or exercise of our rights under this Contract.

**83. Authority and Consent** The clause above is authority and consent from you in accordance with sections in Part 3, Part 7, subpart 1 and all other relevant sections in the Privacy Act 2020.

**84. Right to Access Personal Information** You (if you are an individual) have the right under 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 held by us 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.

## NOTICES

**85. Serving Notices** Any written notice given under this Contract shall be deemed to have been given and received as follows:

- a. by handing the notice to the other party, in person; or
- b. by leaving it at the registered address of the other party; or

- c. by sending it by registered post to the address of the other party; or
- d. if sent by email to the other party's last known email address.

**94. Governing Law** This Contract shall be governed by the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.

END OF TERMS

## GENERAL

- 86. No Waiver** The failure by either party to enforce any provision of this Contract shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 87. Severability** If and to the extent any provision or part of a provision of this Contract is illegal or unenforceable, such provision, or part of a provision will be severed from this Contract and will not affect the continued operation of the remaining provisions of this Contract.
- 88. Entire Agreement** This Contract sets out the entire agreement between the parties.
- 89. Construction Contracts Act** Where the context requires, this Contract is a "construction contract" as defined under the CCA.
- 90. Electronic Acceptance** The parties agree that any legal requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017. In this clause the term "legal requirement" has the meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.
- 91. Changes to Terms** We may amend our general terms and conditions for subsequent future Contracts with you by disclosing the new terms to you in writing. These changes shall be deemed to take effect from the date on which you accept such changes, or otherwise at such time as you make a further request for us to provide Goods or Services to you.
- 92. Precedence:** If there is any conflict or difference between the documents forming the Contract then the order of precedence is:
- a. a Variation Order; and
  - b. any specific departures to these terms as documented in a separate written contract; and
  - c. the Order.
- 93. Remedies:** The rights, powers and remedies provided in the Contract are cumulative and are in addition to any right, powers or remedies provided by law.