

Terms of Trade

1. Definitions

1.1. "Supplier" shall mean Sutherland Built Limited its successors and assigns or any person acting on behalf of and with the authority of Sutherland Built Limited.

1.2. "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Supplier to the Customer.

1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.4. "Goods" shall mean all Goods, Materials and Works supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods, Materials and Works described on any invoices, quotation, work authorisation or any other forms as provided by the Supplier to the Customer.

1.5. "Services" shall mean all services supplied by the Supplier to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above) and shall include any advice or recommendations.

1.6. "Price" shall mean the price payable for the Goods and Services as agreed between the Supplier and the Customer in accordance with Clause 4 of this contract.

1.7. "Approved Customer" means a customer who has completed the credit check requirements for the Supplier and confirmed by the Supplier and their credit agency for the payment plan in relation to the works.

2. Acceptance

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

2.2. The Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder if the Customer places an order for or accepts delivery of the Goods and Services. For the avoidance of doubt, any instructions received by the Supplier from the Customer for the supply of Goods or Services shall constitute a binding contract and acceptance of the terms and conditions herein.

3. Change in Control

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

4. Price and Payment

4.1. At the Supplier's sole discretion, the Price shall be either:

- a) as indicated on invoices provided by the Supplier to the Customer in respect of the Goods and Services supplied; or
- b) the Supplier's estimated Price (subject to clause 4.2) which shall not be deemed binding upon the Supplier as the actual Price can only be determined upon completion of the Works. The Supplier undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate. For the avoidance of doubt, where no price is stated in writing the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by the supplier at the time of this contract.
- c) the Supplier's quoted Price (subject to clause 4.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within (30) days of issue.

4.2. The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation.

4.3. The Customer agrees that the Goods and Services will be subject to a levy for travel based on mileage and/or a set fee at the Supplier's discretion.

4.4. In the event that the Supplier is required to provide the Services urgently, that may require the Supplier's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) the Supplier reserves the right to charge the Customer additional costs, unless otherwise agreed between the Supplier and the Customer.

4.5. At the Supplier's sole discretion a non-refundable deposit may be required.

4.6. At the Supplier's sole discretion:

- a) payment shall be due upon completion of the Services; or
- b) payment for Approved Customers shall be made by instalments in accordance with the Supplier's payment schedule; or
- c) Payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.

4.7. Time for payment for the Goods and Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.8. Payment will be made by cash, or by electronic/on-line banking, credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Supplier.

4.9. Unless otherwise stated the Price does not include GST.

In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Acceptance Error and Admissions

5.1. The Customer agrees that upon the Customer placing an order or accepting a delivery of any Goods or Services they are immediately bound jointly and severally to these terms and conditions.

5.2. The Customer acknowledges and accepts that the Supplier shall without prejudice, accept no liability in respect of any alleged or actual errors and or admissions:

- a) Resulting by a mistake made by the supplier in the formation of or administration of this contract and or;
- b) Contained in omitted from any literature hardcopy or electronic supplied by the supplier in respect of the works.
- c) In the event such error or admission occurs with accordance with the above and it not attributable to the negligence and or wilful misconduct of the Supplier the Customer shall not be entitled to treat this contract as repudiated nor render it invalid in any way.

6. Accuracy of Clients Plans & Measurements for Orders

6.1. The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

6.2. In the event the Customer gives information relating to measurements and quantities of Goods required in completing the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

7. Risk

7.1. If the Supplier retains ownership of any Goods nonetheless, all risk for Goods passes to the Customer on delivery.

7.2. If any of the Goods are damaged or destroyed FOLLOWING delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

8. Customer's Responsibility & Acknowledgment

8.1. The Customer acknowledges that all descriptive specifications illustrations drawings data dimensions ratings and weights stated in Suppliers or manufacturers fact sheets price lists or advertising material are an approximate only and are given by way of identification only.

- a) The Customer shall not be entitled to rely on such information and use of such does not constitute a sale by description and does not form part of the contract unless expressly stated as such in writing by the Supplier.
- b) While the Supplier may have provided the information or figures to the Customer regarding the performance of Goods the Customer acknowledges that the Supplier has given these in good faith and are estimates based on industries prescribed estimates under optimal operating conditions.

c) The Customer acknowledges and undertakes that they will remove from any work area any furniture personal affects or other property likely to impede the Supplier in carrying out the Services in order to minimise the risk of injury and any damage. The Customer shall ensure that the Supplier has clear uninterrupted free access to the work site at all times to enable the Supplier to undertake the Works. The Supplier should not be liable for any loss or damage to the site (including without limitation damage to pathways driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.

d) Prior to the Supplier commencing the Services the Customer must advise the Supplier of the precise location of all underground services and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site.

e) Whilst the Supplier will take all care to avoid damage to any underground services the Customer agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause.

8.2. The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the price with alternative Goods of a similar nature. The Supplier also reserves the right to halt all Services until such time as the Supplier and the Customer agree to such changes.

8.3. Where the Customer has supplied materials for the Supplier to complete the Services, the Customer

acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for any defects in the Services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

8.4. Where the Customer has left property with the Supplier for repair, restoration, or modification or for the Supplier to perform any other Service in relation to the item, it shall be at the sole risk of the Customer.

8.5. The Customer agrees that should the Customer introduce any third party to the Supplier as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods, and/or to request any variation thereto, on the Customer's behalf (such authority to continue until all requested Goods have been delivered, or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer's duly authorised representative). In the event that the Customer's duly authorised representative is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative. The Customer specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier in providing any Goods, or variation/s thereto, requested by the Customer's duly authorised representative.

8.6. If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Supplier, then the Supplier shall notify the Customer immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the relevant Electrical Safety Regulations. The Customer accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Customer's account.

8.7. The Customer warrants that any structures or equipment to which the Goods are to be fixed are able to withstand the installation of the Goods and that the equipment and the electrical connections including but not limited to metre boxes main switches circuit breakers and cables are a suitable capacity to handle the Goods once installed. If for any reason including the discovery of unsafe wiring or dangerous access of crawl spaces and the Supplier reasonably forms the opinion that the Customer's premises is not safe for the installation of Goods to proceed the Supplier shall be entitled to delay the installation of Goods in accordance with (provisions of these terms) until the Supplier is satisfied that it is safe for the installation to proceed.

9. Title

9.1. The Supplier and Customer agree that the ownership of any Goods shall not pass until:

- a) the Customer has paid the Supplier all amounts owing for the particular Goods; and
- b) the Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer.

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

9.3. It is further agreed that:

- a) where practicable the Goods shall be kept separate and identifiable until the Supplier shall have received payment and all other obligations of the Customer are met; and
- b) Until such time as ownership of the Goods shall pass from the Supplier to the Customer the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

c) the Customer is only a bailee of the Goods and until such time as the Supplier has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Supplier for the Goods, on trust for the Supplier; and d) until such time that ownership in the Goods passes to the customer, if the Goods are converted into other products, the parties agree that the Supplier will be the owner of the end products; and e) if the Customer fails to return the Goods to the Supplier then the supplier or the Supplier's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and the Supplier will not be liable for any reasonable loss or damage suffered as a result of any action by the Supplier under this clause.

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

10.1. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- b) a security interest is taken in all Goods previously supplied by the Supplier to the Customer (if any) and all Goods that will be supplied in the future by the Supplier to the Customer.

10.2. The Customer undertakes to:

- a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities

Register;
b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
c) not register a financing change statement or a change demand without the prior written consent of the Supplier; and
d) Immediately advise the Supplier of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

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

10.4. The Customer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

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

10.6. The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 10.1 to 10.5

11. Customer's Disclaimer

11.1. The Customer hereby disclaims any right to rescind or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Goods and Services are bought relying solely upon the Customer's skill and judgement.

12. Defects

12.1. The Customer shall inspect the Goods on delivery/installation and shall within three (3) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the

description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.

12.2. Goods will not be accepted for return other than in accordance with 12.1 above.

13. Consumer Guarantees Act 1993

13.1. If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Supplier to the Customer.

14. Construction Contracts Act 2002

14.1. The Supplier shall be entitled to exercise all or any powers available to the Supplier under the Construction Contracts Act 2002 including suspension of work, adjudication and seeking charging orders.

14.2. The Customer acknowledges that:

- a) The Supplier has the right to suspend work within five (5) working days of the date of any written notice of its intent to do so if:
- b) The claimed amount in a Payment Claim is not paid in full by the due date for payment and no Payment Schedule has been provided by the Customer; or
- c) A Scheduled Amount provided in a Payment Schedule provided by the Customer in relation to the Payment Claim is not paid in full by the due date for its payment; or
- d) The Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Company by a particular date; and
- e) The Supplier has given written notice to the Customer of its intention to suspend the carrying out of the Services.

- f) If the Supplier suspends work, it:
 - (i) Is not in breach of this agreement;
 - (ii) Is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer;
 - (iii) Is entitled to an extension of time to complete the Services and to recover any costs incurred as a consequence of the extension of time;
 - (iv) Keeps its rights under this agreement including the right to terminate this agreement;
 - (v) May at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.

g) If the Supplier exercises the right to suspend work, the exercise of that right does not:

- (i) Affect any rights that would otherwise have been available to the Company under the Contractual Remedies Act 1979; or
- (ii) Enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Company suspending work under this provision.

h) In this clause where used the following terms shall have the meanings ascribed to them in the Construction Contracts Act 2002; "Claimed Amount", "Payment Claim", "Payment Schedule" and "Scheduled Amount".

15. Intellectual Property

15.1. Where the Supplier has designed, drawn or created specific items for the Customer, then the copyright in those designs and drawings and items shall remain vested in the Supplier, and shall only

be used by the Customer at the Supplier's discretion.

15.2. The Customer warrants that all designs or instructions to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

16. Default & Consequences of Default

16.1. Interest on overdue invoices of 20% will apply at the Supplier's sole discretion. Such interest shall compound monthly at 2.5%.

16.2. If the Customer owes the Supplier any money the Customer agrees it is responsible for all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees), and accordingly, the Customer agrees to indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in respect of the same.

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

16.4. Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

- a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;

- b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Security and Charge

17.1. Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:

- a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - b) should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.
 - c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause
- 17.1.

18. Cancellation

18.1. The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage howsoever arising from such cancellation.

18.2. In the event that the Customer cancels the delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

19. Privacy Act 1993

19.1. The Customer authorises the Supplier or the Supplier's agent to:

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

19.2. Where the Customer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.

19.3. The Customer shall have the right to request the Supplier for a copy of the information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Customer held by the Supplier.

20. Unpaid Seller's Rights

20.1. Where the Customer has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other Services in relation to the item and the Supplier has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Supplier shall have:

- a) a lien on the item;
- b) the right to retain the item for the Price while the Supplier is in possession of the item;
- c) a right to sell the item.

20.2. The lien of the Supplier shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

21. General

21.1. 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.

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

21.3. The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions.

21.4. In the event of any breach of this contract by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Materials.

21.5. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

21.6. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

21.7. The Supplier reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change.

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

21.9. The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it

affect the Supplier's right to subsequently enforce that provision.

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

21.11. The Customer shall obtain (at the expense of the Customer) all licenses, approvals, applications and permits that may be required for the Services.

21.12. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.