



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 of trade when any one of the following occurs:

- a. place an order for any Goods and Services from us; and/or
- b. accept delivery of any Goods from us; and/or
- c. accept our Services by permitting entry by us to your premises to perform Services or install any Goods; and/or
- d. issue a purchase order to us following receipt of a Quote/Cost Estimate,

and together these terms apply in conjunction with any specific exclusions or additional terms specified in any Quote/Cost Estimate

2. Our Contract Your acceptance of the Quote/Cost Estimate and these general terms together constitute our agreement with you (this **Contract**). This Contract governs the agreement between **CONNECT DRAINAGE AND EARTHWORKS LIMITED (COMPANY NUMBER 8375085)** (“us”, “our” or “we”) and you, the named customer in the Quote/Cost Estimate, in respect of the Goods and Services.

3. “Business Days” Any reference to ‘Business Days’ in these terms means a day on which banks are ordinarily open and excludes a Saturday, a Sunday or a public holiday. Any other reference to a ‘day’ shall mean a calendar day.

4. “You” Means the purchaser buying the Goods and Services as specified in any invoice, order, Quote/Cost Estimate or any other document. If the purchaser comprises more than one person, each of those persons’ liability and agreement is joint and several.

5. “Us” Any reference to ‘us’ in these terms includes any contractor, employee, assignee, transferees or approved subcontractor that we use.

OUR SERVICES AND OBLIGATIONS

6. Goods and Services Our Services include:

- a. any works performed relating to drainage system design, maintenance, installation, cartage, civil works or other related services; and
- b. supply of Goods and materials required in connection with Services described in the Quote/Cost Estimate; and

together these are the ‘Goods’ and/or ‘Services’ as the context requires.

7. Subcontractors Either we or our approved subcontractors will perform the Services for you.

8. Performance We will perform our Services with due skill and care and in a competent manner. All Goods and materials supplied as part of the delivery of the Services will be fit for purpose for the proposed use and unless agreed with you, will be new.

9. Exclusions All job specific exclusions are listed in our Quote/Cost Estimate and are incorporated into these terms.

10. Plans and Specifications All plans and specifications accompanying these terms, including any variations to such plans and specifications, form part of this Contract.

11. Updates on Timing We will advise you of any anticipated delay to provide a Service or procure Goods.

12. Certificate of Completion and Record of Work If required by law, we will give you any certificate or similar document as needed to confirm the works are completed.

13. No Guarantee of Concurrent Days We may be managing multiple jobs to perform work for other clients in addition to the Services to you. We will keep you informed of the dates or times we can attend your Site or site to perform the works. Unless we have expressly agreed in writing, we will not be exclusive to your job and will be under no obligation to attend your Site on repeated, concurrent days.

14. Work May be Performed in Instalments We may perform the Services and related works in instalments on different dates.

CUSTOMER OBLIGATIONS

- 15. Authority for Approval Decisions** You must nominate a single individual with authority to give instructions or approval to us, and where you are working with a professional consultant that you wish to delegate approval and authority to, you must provide us with written confirmation of their contact name, status and basis on which approval or instructions can be accepted by us.
- 16. 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 in our scope of works.
- 17. Certifications** You are responsible for arranging all and any applicable compliance certification for the works and Services at your sole cost unless we have expressly agreed to perform this as your agent in our scope of works.
- 18. Separate Contractors** You are responsible for arranging all and any geotechnical, structural, design and surveying services and any other separate contractor that is required as part of your project and whom we will not engage directly (**Separate Contractors**) prior to us commencing the Services. Where you require us to liaise with the Separate Contractors as part of our Services, this may be chargeable at a time and materials rate if we have not included this liaison time in our Quote/Cost Estimate.
- 19. Asbestos Detection Report** Where requested, you must obtain and supply to us a clearance report at your sole cost from a competent expert to confirm that asbestos is not present at the Site unless we have expressly agreed to perform this as your agent in our scope of works.
- 20. 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:
- a. plans of underground services locations to be ordered; and
 - b. cable locations and mark-out to be performed; and
 - c. mark-outs of all recommended clearances between detected services; and
 - d. arrange and meet costs (if applicable) of a stand-over service where we identify the Site as high-risk of underground cable or services strikes in relation to the identification and location of all underground services.
- 21. Boundary Markings** Where our Services require boundaries to be followed, all survey pegs and boundary markings must be clearly visible and present.
- 22. Site Preparation Works** You must complete the following customer works at your cost in advance of us commencing the Services. These include, but are not limited to, the following:
- a. **Removal of obstructions** this includes the removal of obstructions to access to the Site; and/or
 - b. **Interior clearance** where our Services require access through the interior of a dwelling or structure, the area is made clear for performance of the Services; and/or
 - c. **Excavation works** all excavation, site scraping, downpipes, drainage and other necessary works have been completed and performed; and/or
 - d. **Ground levels** all ground levels must be at the required levels indicated in our plans or to our specific instructions to enable the Services to be performed; and/or
 - e. **Services trenching** all service trenches must have been closed with appropriate compacted backfill where necessary for the performance of the Services; and/or
 - f. **Roading surfaces** all roading surfaces under your ownership (excluding those vested in local authorities) meet adequate strength ratings to support loads including vibration, weight and depth checks related to methods we may use in the performance of the Services; and/or
 - g. **Other preparatory works** any other preparatory work that you have expressly agreed you will perform in advance of the Services.

- 23. Development Plans** Where you are a developer, you must supply us with complete and accurate plans for the development or subdivisions and ensure we are supplied with revised and updated plans as soon as they are updated.
- 24. Traffic Management** You are responsible for submitting and arranging all traffic management plans required by any authority and managing the timeframe for such approvals to align with the commencement of our Services where we agree traffic management is a requirement to perform our Services.
- 25. Scope Changes to a Minimum** You acknowledge and accept that if you request a Variation (such as a change to your selections, the scope, or the order of any stage of the works) we may not be able to accommodate this in the timeframe you expect.

PRICE AND DEPOSITS

- 26. All Quote/Cost Estimates Supplied as a Cost Estimate by Default** Unless our Quote/Cost Estimate specifically states that we offer a fixed price for the Services, all of our Quote/Cost Estimates are issued as an estimate of the costs for the specific scope based on assumption of a capped number of labour hours and the materials for the scope of work.
- 27. Deposit and Time for Payment of Deposit** Our Quote/Cost Estimate will state if a Deposit is required to confirm the booking of our Services.

PAYMENTS AND INVOICING

- 28. Services Calculated using Time and Materials** 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 of materials required to meet the scope of Services.
- 29. Amounts Owing Payable on Due Date** All amounts specified in an invoice will require payment on the due date specified in the invoice (**Amounts Owing**).
- 30. Invoices May Be Progress Payments** We will invoice for the Services on the following basis as specified in your Quote/Cost Estimate:

- h. on a specific frequency (e.g. fortnightly or monthly) for actual hours and materials incurred; or
- i. at an agreed frequency or interval for specified milestones or stages of the works or Services; or
- j. in specified percentages at specific dates.

31. Retentions No retentions shall apply on Services performed under these terms unless expressly agreed in advance.

32. 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.

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

34. Invoices are Issued as Payment Claims Where this is a "construction contract" as defined in the CCA, all invoices are issued as a payment claim in accordance with Part 2 of the CCA.

35. If You Dispute the Amount Owing If you receive an invoice and you consider you owe us a lesser amount than the sum stated as the Amount Owing, you must issue a valid **payment schedule** (a term used in s21 of the CCA) to us within **five (5) Business Days** of receiving our invoice (**Payment Schedule**). To meet the requirements of the CCA, you must ensure that your Payment Schedule details:

- k. the amount you have calculated you think should be paid; and
- l. how you have calculated this amount; and
- m. why this amount is less than the Amounts Owing as stated in our Payment Claim invoice; and
- n. your reasons for not paying the Amounts Owing.

36. Full Amounts Owing where no Payment Schedule Issued If you have not responded with a valid payment schedule in writing within the timeframe specified above, we are entitled to treat any amount stated in our invoice as an Amount Owing and it remains due and payable. If you do respond with a valid payment schedule stating a lesser amount or no amount,

and we do not agree with you, we reserve our rights to use the Dispute Resolution procedures set out in these terms.

37. Duty to Pay Undisputed Amounts Owing Even when you issued a Payment Schedule, you acknowledge and agree that you will not be entitled to withhold payment in respect of any undisputed Amount Owing.

38. Overdue Amounts Owing If you do not pay an Amount Owing by the Due Date and you have not issued us with any valid payment schedule or any later date we have agreed in writing, this becomes an Overdue Amount Owing. After a period of **5 (five) Business Days**, we shall have the right to apply late payment interest at our published rate (**5% if not otherwise published elsewhere**). 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).

39. Debt Collection or Recovery Costs If an Overdue Amount Owing 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 Owing. You will be liable for the costs incurred by us in the collection of any unpaid amounts including but not limited to full solicitor-client legal fees on an indemnity basis, debt collection fees and internal administration fees.

40. Administration Fees In the event we are obliged to perform any additional actions to recover any monies owed by you, we reserve the right to apply reasonable administrative fees for phone calls, texts, emails and in-person visits to follow up and recover any Overdue Amount Owing in addition to any costs or expenses stated in any clauses above.

VARIATIONS

41. Variations to Price or Time We reserve the right to issue a Variation Order to change the total price or extend the time to complete the Services in the following circumstances:

a. 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 where a change to the plans or specifications is made by you or any representative authorised by you (including architects, structural engineers, or other contractor you direct us to take instructions from); and/or

c. Materials changes where a change to selection of materials, is required or requested after you have accepted our Quote/Cost Estimate whether or not the Services have commenced; and/or

d. Site extension where an extension to the Site area is requested that extends the sqm on which we have provided our Quote/Cost Estimate; and/or

e. Change to commencement date where a change to the date for commencement agreed upon in our Quote/Cost Estimate 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 scope increases or changes due to any of the following:

(i) encountering unsuitable ground or overhead obstructions that prevent works; and/or

(ii) dewatering any mains, ducts or other conduits or channels that may flood or allow water ingress as a result of the works; and/or

(iii) poor weather conditions; and/or

(iv) limitations to accessing the Site or site to perform the Services; and/or

(v) prerequisite work by a third party not being completed to prepare or erect the surfaces to be worked on; and/or

(vi) ground conditions or presence of rock/hard ground that adversely affects the suitability of the surface to be worked on; and/or

- (vii) encountering asbestos (actual or suspected) during the course of the Services which could not have been reasonably foreseen; and/or
- (viii) 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
- (ix) encountering hazardous waste or contaminated ground, soil, materials, waste or another surface; and/or
- (x) discovery of any archaeological or cultural artifacts or remains.

To avoid doubt, we will determine in our industry experience if such issues are hazardous or affect the scope of services.

- h. **Costs fluctuations** where the cost of materials or other costs or expenses relating to supply of materials increases beyond our control from the date of issue or acceptance of our Quote/Cost Estimate; and/or
- i. **Materials substitutions** where there is a requirement for us to substitute one or more materials or fixtures selections due to supply chain and/or procurement issues and the substitute material or selection agreed upon is a higher cost to the price indicated or estimated in our Quote/Cost Estimate; and/or
- j. **Any other impacts** where there is a requirement for us to extend the time or cost it takes to complete the works due to the impact of any other changes which are not listed above but which we deem in our reasonable opinion are a Variation.

42. Additional Labour Hours If additional labour hours are:

- a. requested by you to complete the Services in a shorter timeframe than initially agreed or projected; and/or
- b. required due to waiting time due to any of the reasons listed in the clause above,

this will be a Variation. You may be liable to meet these additional labour costs at a premium rate for the additional manhours.

43. All Rights Reserved to Decline a Variation

Where a Variation has been requested by you directly to extend scope, decrease a timeframe, or increase labour units, we reserve our right to decline to treat this as a Variation. In some circumstances, we may elect to treat the request as a new scope of Services and will advise you if a new Quote/Cost Estimate is to be supplied.

44. How We Will Confirm a Variation

We shall supply you with a written Variation Order stating the changes to the Quote/Cost Estimate, how the price change has been or will be calculated and state any additional costs to accommodate the Variation. This will be supplemental and in addition to the Quote/Cost Estimate attached to these terms.

45. How We Will Confirm a Variation if we need to Continue the Works that Day

We will use all reasonable efforts to contact you to inform you of the Variation event in advance (by phone or text if you are not on site) to discuss and agree the Variation verbally. However, if this is not achievable and we deem it necessary (in our sole discretion) to continue with the Services, you agree that this will not invalidate the Variation Order that we issue to you. You further accept and agree that in these circumstances, you confirm that we are entitled to invoice these additional sums (if any) stated in the Variation Order.

46. When Time and Materials Rates Apply

Where we have to perform a Variation at short notice, or in the circumstances set out in the clauses above, and we cannot issue a Variation Order with a revised quote or fixed price, we shall charge on a time and materials basis (unless another method of charging has been otherwise agreed in our Quote/Cost Estimate).

SUSPENSION AND TERMINATION OF SERVICES

47. Suspension of Services for Overdue Amounts Owning

If there is an Overdue Amount Owning and such default continues for **(5) Five Business Days** then we shall be entitled to immediately suspend the Services without notice and such suspension shall be on the same basis as if it were a suspension under s24A (2) and (3) of the Construction Contracts Act 2002.

48. 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 the Services that remain unfulfilled) and shall not be liable to you for any delay, loss or damage suffered by you due to us exercising our rights under this clause, if one or more of the circumstances listed below occurs:

- a. you fail to pay the Deposit to confirm acceptance of our Services; and/or
- b. you fail to pay any sums that have become an Overdue Amount Owing; and/or
- c. 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
- d. we or our approved contractors are denied access to or are unable to access the Site to carry out the Services for whatever reason. To avoid any doubt, where we or our approved contractors assess that the means of access to the premises is unsafe and would breach the relevant safety requirements under applicable health and safety legislation, this is a valid reason for termination if it cannot or will not be remedied by you.

49. Termination for Convenience If you elect to terminate this Contract prior to commencement of the Services where there is no default by us, you must inform us in writing with no less than **ten (10) Business Days'** notice prior to the scheduled date for commencement of the Services. Where you elect to terminate the Services after the date of commencement, this is at our sole discretion. In either event, the clauses below in relation to sums for Amounts Owing shall apply.

50. Retention of Deposit In the event you terminate this Contract before we commence the Services, we will be entitled to retain the following:

- a. the entire amount incurred by us in relation to materials ordered or purchased (whether to custom specifications or not); and

- b. an amount to cover our administration and expenses up to and including the date of notice of termination.

51. Amounts Owing for Services and Custom Materials 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 the Services, including (but not limited to):

- a. Services which have commenced but have not been completed up to the date of termination; and/or
- b. Services already performed and completed up to the date of termination; and/or
- c. Custom Materials already ordered to your specifications as at the date of termination. Following receipt of the outstanding balances owing for Custom Materials, these shall be delivered to you (with any applicable delivery or freight fee added to your invoice).

WARRANTIES

52. Consumer Guarantees Act If you are a customer in trade or business and the Services acquired from us under this Contract are for business purposes, the provisions of the Consumer Guarantees Act 1993 (**CGA**) shall not apply. Otherwise, the provisions of the CGA shall apply.

53. Health and Safety We will perform the Services to accepted industry standards and in accordance with the Health and Safety at Work Act 2015.

54. Delay Fees You are not entitled to claim any delay fees, liquidated damages or other costs or expenses related to any delay in the performance of our Services.

55. Remedies for Defective Services If any defective workmanship is discovered within **(5) Five Business Days (Warranty Notice Period)** and none of the limitations or exceptions listed in this section apply, we shall remedy any defective workmanship by a re-performance of the Services only. No refunds of any fees are available.

This guarantee is in addition to any implied warranties at law.

56. Accepted Industry Tolerances You agree that the following are accepted tolerances within our industry sector and will not constitute a breach of any quality guarantee we offer to you under this Contract or at law:

- a. alteration of colour, texture, size or content of individual rocks, stones, barks, shells or soil types contained within a batch or volume order; and/or
- b. broken or misshaped variations among any batch or volume order of materials; and/or
- c. product variations and changes in aggregate due to weathering, seasons or different quarry seams; and/or
- d. timber grain variances in timber-based product varnishes, staining or other timber-based finishes; and/or
- e. shrinkage, swelling, cracking and warping of timber-based goods or structures due to moisture, temperature fluctuations and weathering; and/or
- f. cracking of concrete surfaces due to standard industry accepted tolerances; and/or
- g. hairline cracking of paving and grout; and/or
- h. any other tolerances stated in any industry standard issued in connection with the Services.

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

- a. accepted industry tolerances are present or detected; and/or
- b. damage to roading surfaces, footpaths, crossings or any part of accessways to the Site occurs where you were required to ensure the adequacy of these surfaces as part of your Customer Obligations; and/or
- c. the fault or defect is not notified to us within the applicable Warranty Notice Period; 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 or dwelling (where applicable) in a sound and reasonable condition in such a way that it caused the defect; and/or
- (iii) you or your representatives not following instructions to keep surfaces clear of vehicles, foot traffic and furniture for the specified period indicated by us; and/or
- (iv) you or your representatives not watering concrete periodically to limit risk of cracking due to weather conditions for the specified period indicated by us; and/or
- (v) 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
- (vi) any part of the surfacing installed being misused, abused, neglected, or damaged after installation or completion; and/or
- (vii) any installed ducts being repaired, modified, reinstalled, or repositioned by anyone other than us or our approved contractors.

58. 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.

PRIVACY

59. Use of Personal Information 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. assessing creditworthiness and exercising our rights and/or performing our obligations under this Contract;
- b. 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;
- c. 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
- d. history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
- e. registering any Security Interest under this Contract; and
- f. 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.

60. 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.

61. 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.

RISK

62. 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 (including where Goods have been installed at your Site as part of the Services). The responsibility to insure those Goods shall pass to you.

TITLE TO GOODS, PLANT AND EQUIPMENT

63. Retention of Title to Goods We own the Goods (if any) supplied to you as part of the Services 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 has been received by us. Until the Amounts Owing have been paid, you hold the Goods as trustee and agent for us.

64. 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.

65. 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 or 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)

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

67. 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.

68. 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 (see <https://ppsr.companiesoffice.govt.nz/> for more information). Where we have rights in addition to those in Parts 9 of the PPSA, you agree that those rights shall continue to apply.

69. 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.

70. 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 to 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.

71. Right to Enter Premises or Site You irrevocably grant us the right to enter your Site or premises, 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 shall be added to any Amounts Owing.

SECURITY AND CHARGE

72. Security Charge In consideration of us agreeing to supply the Goods and Services, you charge all of your rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by you either now or in the future, and you grant a security interest in all of your present and after-acquired property, to secure the

performance by you of your obligations under this Contract (including, but not limited to, the payment of any money or Amounts Owing).

73. Indemnity You indemnify us from and against all of our costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising our rights under this clause.

74. Appointment as Attorney You irrevocably appoint us and each director (if more than one and where we are incorporated) as your true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on your behalf.

LIMITATION OF OUR LIABILITY

75. Delays to Performance of Services Subject to the clause below, if the Services cannot proceed on the scheduled date and time for any reason, we will discuss this with you, and this will be a Variation. We exclude liability to you for any claims, losses, damages, and costs (direct, indirect, or anticipated) incurred by you for the Services not taking place as planned. In the event that 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.

76. Force Majeure Neither party will be liable for any non-performance of its obligations under this Contract due to a force majeure event. For the purposes of these terms, “**force majeure**” means an event or circumstance which leads to a default of either party under this Contract due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, port closure or border closure plus any national or global pandemic effects, including, for the avoidance of doubt, any default due to any implementation of any regulation, directive, rule or measure by any government, state or other authority under the governing law of this Contract. **This clause does not apply to a default by you to pay Amounts Owing.**

77. Limit of Liability Our total aggregate liability to you arising out of or in connection with the Services whether in contract, any indemnity, 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).

78. Exclusion of Our Liability To the fullest extent permitted by law, and subject to our obligations during the Warranty Notice Period or under any applicable law that imposes guarantees on us, we exclude all liability to you for 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.

79. Damage to Underground Services You warrant that without limiting our other rights and remedies, you shall indemnify and hold us harmless against and from all costs and expenses (including reasonable legal costs) in relation to any claim or proceeding brought against us in respect of any damage caused to underground services during the performance of our Services.

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

DISPUTE RESOLUTION

81. 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.

82. Obligations Continue If there is a Dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

83. You Must Still Pay Amounts Owing Notwithstanding the presence of a dispute, you must still comply with your obligations to pay us in accordance with the terms of this Contract unless the dispute specifically relates to a disputed amount on an invoice. In that case, you must pay the undisputed portion of that invoice.

NOTICES

84. Deemed Notice 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 as stated in this Contract; or
- c. by sending it by registered post to the address of the other party as stated in this Contract; or
- d. if sent by email to the other party's last known email address.

GENERAL

85. 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.

86. Severability If and to the extent any provision or part of a provision 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.

87. Entire Agreement This Contract sets out the entire agreement between the parties.

88. Construction Contracts Act Where the context requires, this Contract is a construction contract as defined under the Construction Contracts Act 2002.

89. Signing Not Required It is not necessary for this Contract to be signed unless we insist on it. You are bound by these terms if you continue to act in a way that is consistent with the arrangement and discussions you have had with us in relation to the Quote/Cost Estimate, and we have incurred time and expense in procuring materials or commenced any part of the Services or works for you, or if you have paid a Deposit.

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.



END OF TERMS