

1. Definitions

- 1.1 “Contractor” means Masters Plumbing Limited, its successors and assigns or any person acting on behalf of and with the authority of Masters Plumbing Limited.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Works” means all Works or Materials supplied by the Contractor to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by the Contractor to the Customer (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Customer.
- 1.5 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works and/or Equipment hire as agreed between the Contractor and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works/Equipment.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Contractor.
- 2.3 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied is given in good faith, is based on the Contractor own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.
- 2.4 In the event that the Contractor is required to provide the Works urgently, that may require the Contractor staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Contractor and the Customer.
- 2.5 If the Contractor has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 2.6 The Customer acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 5.2. In all such cases the Contractor will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer’s order on hold until such time as the Contractor and the Customer agree to such changes.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give the Contractor 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, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At the Contractor’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Contractor to the Customer in respect of Works performed or Materials/Equipment supplied; or
 - (b) the Contractor’s quoted Price (subject to clause 5.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor’s quotation in writing within thirty (30) days.
- 5.2 The Contractor reserves the right to change the Price:
- (a) if a variation to the Works/Equipment which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to poor weather conditions, limitations to accessing the site, obscured site/building defects which require remedial work, health hazards and safety considerations such as the discovery of asbestos, latent soil conditions, prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring/cablings, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor’s control.

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- 5.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Contractor's sole discretion a deposit may be required.
- 5.5 Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Materials/Equipment;
 - (b) before delivery of the Materials/Equipment;
 - (c) by way of progress payments in accordance with the Contractor's payment schedule. The Contractor may submit a detailed payment claim at intervals not less than weekly for work performed up to the end of each week. The value of Works so performed shall include the reasonable value of authorised variations and the value of Materials delivered to the site but not yet installed. Progress payment shall be made within twenty (20) working days of each monthly payment claim;
 - (d) for certain approved Customer's, 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;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.
- 5.6 At the agreement of both parties, payment of the Price may be subject to retention by the Buyer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Buyer shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 5.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Contractor.
- 5.8 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply of Works/Equipment by the Contractor under this or any other contract. 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.

6. Delivery

- 6.1 Subject to clause 6.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify the Contractor that the site is ready.
- 6.3 Delivery Materials/Equipment is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Materials/Equipment at the Contractor's address; or
 - (b) the Contractor (or the Contractor's nominated carrier) delivers the Materials/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 6.4 At the Contractor's sole discretion, the cost of delivery is either included or is in addition to the Price. Delivery and removal of the Equipment are in addition to the hire charges.
- 6.5 The Contractor may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 Any time specified by the Contractor for delivery of the Works/Equipment is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works/Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works/Equipment as agreed solely due to any action or inaction of the Customer, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works/Equipment at a later time and date, and/or for storage of the Equipment/Materials.

7. Risk

- 7.1 If the Contractor retains ownership of the Materials under clause 12 then:
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery;
 - (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 7.3 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or latent or unfavourable soil conditions such

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- as liquefaction residue or risk) that the Contractor, or the Contractor employees, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then the Contractor shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 6.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.
- 7.4 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where the Contractor is requested to merely clear such blockages, the Contractor can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, the Contractor will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.
- 7.5 In the event that the Customer requests the Contractor to use drain/pipe unblocking equipment, and the Contractor does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the Contractor may require the Customer or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- 7.6 The Contractor shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Customer specifically requires the Materials to be installed in any way which goes against the Contractor's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to the Contractor. Accordingly, the Contractor offers no warranty in regards to the aforementioned.
- 7.7 The Customer accepts and acknowledges that:
- where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims or drainage components used due to the difference in metal alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Materials; and
 - in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Contractor against any costs incurred by the Contractor as a consequence of such discovery. Under no circumstances will the Contractor handle removal of asbestos product; and
 - the Contractor is only responsible for parts that are replaced by the Contractor and that in the event that other parts/Materials, subsequently fail, the Customer agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and
 - the Contractor gives no implied or express warranty on pre-existing leaks and or causes of the same; and
 - the Contractor gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond the Contractor's control due to the nature of the product at the time of installation, therefore it is recommended that the Customer allows for extra product for such breakages.
- 7.8 The Contractor accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with the Contractor's and/or the manufacturers' recommendations
- 7.9 The Customer acknowledges that:
- all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Contractor's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.
 - Materials supplied may:
 - fade or change colour over time; and
 - expand, contract or distort as a result of exposure to heat, cold, weather; and
 - mark or stain if exposed to certain substances; and
 - be damaged or disfigured by impact or scratching.
- 7.10 The Customer acknowledges and agree that where the Contractor has performed temporary repairs that:
- the Contractor offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - the Contractor will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair.
- 7.11 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Customer or the Customer's agent.
- 8. Accuracy of Customer's Plans**
- 8.1 The Contractor 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 Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information
- 9. Access**
- 9.1 The Customer shall ensure that the Contractor has clear and free access to the site at all times to enable them to undertake the Works. The Contractor shall 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 Contractor.
- 10. Underground Locations**
- 10.1 Prior to the Contractor commencing the Works the Customer must advise the Contractor of the precise location of all underground services on the site 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.
- 10.2 Whilst the Contractor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Contractor 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 clause 10.1.

11. Compliance with Laws

- 11.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any Worksafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.2 The Contractor has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015, including any subsequent regulations (the "HSW Act") arising from the engagement of Works under this contract. Unless otherwise agreed, the parties agree that for the purposes of the HSW Act, the Contractor shall not be the person who controls the place of work in terms of the HSW Act.
- 11.3 The Customer shall obtain (at the expense of the Customer) all licenses, approvals, applications and permits that may be required for the Works.
- 11.4 Prior to commencement of any Works the Contractor shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.
- 11.5 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Customer.
- 11.6 The Customer warrants that any existing plumbing, gasfitting and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. The Contractor reserves the right to halt all Works (in accordance with the provisions of clause 6.2 above) if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed the Contractor will charge a standard fee for the time spent on worksite based on the Contractor's quotation.

12. Title to Materials

- 12.1 The Contractor and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Customer has met all of its other obligations to the Contractor.
- 12.2 Receipt by the Contractor 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Materials and must return the Materials to the Contractor on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
 - (d) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
 - (e) the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials;
 - (f) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor;
 - (h) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

- 13.1 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 Materials/Equipment and/or collateral (account) – being a monetary obligation of the Customer to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 13.2 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 Contractor 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 Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials/Equipment charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials/Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and
 - (d) immediately advise the Contractor of any material change in its business practices of selling Materials/Equipment which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Contractor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

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- 13.5 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 13.1 to 13.5.
- 14. Security and Charge**
- 14.1 In consideration of the Contractor agreeing to supply the Works/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 14.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects**
- 15.1 The Customer shall inspect the Materials/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Contractor an opportunity to inspect the Materials/Equipment within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials/Equipment shall be presumed to be free from any defect or damage. For defective Materials/Equipment, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials/Equipment or repairing the Materials/Equipment.
- 15.2 Materials/Equipment will not be accepted for return for any reason other than those specified in clause 15.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).
- 16. Returns of Materials**
- 16.1 Returns of Materials will only be accepted provided that:
- the Customer has complied with the provisions of clause 15.1; and
 - the Contractor has agreed in writing to accept the return of the Materials; and
 - the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
 - the Contractor will not be liable for Materials which have not been stored or used in a proper manner; and
 - the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.2 The Contractor may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.
- 16.3 Returned goods may (at the Contractor's sole discretion), incur restocking and handling fees.
- 16.4 Non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 17. Warranty**
- 17.1 Subject to the conditions of warranty set out in Clause 17.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by Clause 17.1 are:
- the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - failure on the part of the Customer to properly maintain any Materials; or
 - failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor; or
 - any use of any Materials otherwise than for any application specified on a quote or order form; or
 - the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - fair wear and tear, any accident or act of God.
 - the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
 - in respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 17.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
- 17.4 The conditions applicable to the warranty given on Materials supplied by the Contractor are contained on the "Warranty Document" that will be supplied with the Materials.
- 18. Consumer Guarantees Act 1993**
- 18.1 If the Customer is acquiring Materials 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 Contractor to the Customer.

19. Intellectual Property

- 19.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any Materials/Equipment for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Customer at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 19.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 19.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials/Equipment which the Contractor has created for the Customer.

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies the Contractor may have under this contract, if a Customer has made payment to the Contractor, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 20.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

21. Cancellation

- 21.1 Without prejudice to any other remedies the Contractor 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 Contractor may suspend or terminate the supply of Materials/Equipment to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 21.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Materials/Equipment at any time before the Materials/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for the Materials/Equipment. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Customer cancels delivery of the Materials/Equipment the Customer shall provide notice of cancellation in written and will be liable for any and all loss (including but not limited to, Works already completed and Materials ordered but not yet installed) incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for Materials made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Act 1993

- 22.1 The Customer authorises the Contractor or the Contractor'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 Contractor from the Customer directly or obtained by the Contractor 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.
- 22.2 Where the Customer is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 The Customer shall have the right to request the Contractor for a copy of the information about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Customer held by the Contractor.

23. Construction Contracts Act 2002

- 23.1 The Customer hereby expressly acknowledges that:
- (a) the Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or

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- (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Contractor suspends work, it:
- (i) is not in breach of contract; and
 - (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; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and 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.
- (c) if the Contractor 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 Contractor under the Contract and Commercial Law Act 2017; 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 Contractor suspending work under this provision.

24. Service of Notices

24.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

25.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:

- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Customer will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

26. General

26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

26.2 The failure by either party to enforce any provision of these terms and conditions 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.

26.3 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.

26.4 The Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Materials/Equipment hire).

26.5 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

26.6 The Customer cannot licence or assign without the written approval of the Contractor.

26.7 The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.

26.8 The Customer agrees that the Contractor may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Contractor to provide Works/Equipment on hire to the Customer.

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

26.10 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

Additional Terms & Conditions Applicable to Hire Only

27. Hire Period and Charges

- 27.1 The Customer accepts and acknowledges that:
- (a) the hire period of the Equipment, as agreed between the Contractor and the Customer, shall either be:
 - (i) a half day, with a maximum hire period of four (4) hours or overnight provided that the Customer collects the Equipment from the Contractor after 4:00pm and return to the Contractor by 8:30 am; or
 - (ii) on a daily rate which shall mean a twenty-four (24) hour period with a maximum usage time of eight (8) hours; or
 - (iii) weekly which shall mean six (6) days with a maximum usage time of forty-eight (48) hours; or
 - (iv) monthly which shall mean a calendar month with a maximum usage time of one hundred and sixty (160) hours (e.g. Equipment collected on the 20th of the month, is to be returned by 4:00pm on the 20th of the following month).
 - (b) the Contractor may charge additional costs on a pro rata basis for any Equipment hired in excess of the agreed times and/or maximum hire period as set out in clause 27.1(a)
 - (c) certain Equipment, where applicable, may have a minimum hire period. The Customer shall not be entitled to a refund and/or reduced fee where Equipment are returned before the end of the agreed hire time.; or
 - (d) for Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.
- 27.2 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 27.3 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 27.4 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Contractor confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Contractor immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer

28. Risk to Equipment

- 28.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 28.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 28.3 The Client will insure, or self insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 28.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

29. Title to Equipment

- 29.1 The Equipment is and will at all times remain the absolute property of the Supplier.
- 29.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 29.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

30. Customer's Responsibilities

- 30.1 The Customer shall:
- (a) maintain the Equipment, at the Customer's expense, as is required by the Contractor (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
 - (b) notify the Contractor immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - (c) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by the Contractor or posted on the Equipment;
 - (e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (f) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (g) keep the Equipment in their own possession and control;
 - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (i) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (j) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (k) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;

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- (l) on completion of hire either:
 - (i) notify the Contractor by telephone at the initial branch of any request to remove the Equipment; or
 - (ii) obtain an offhire number, pick-up ticket number or return slip from the Contractor when the Equipment has either been finished with and is awaiting pickup or has been returned by the Contractor's branch.
 - (iii) if applicable, on termination of the hire, ensure that the Equipment complete with all parts and accessories is packed up and ready for loading and have the necessary assistance available to assist with loading the Equipment.
- 30.2 Immediately on request by the Contractor the Customer will pay:
 - (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Contractor;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
 - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Contractor's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
 - (f) any lost hire fees the Contractor would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (g) the cost of fuels and consumables provided by the Contractor and used by the Customer;
 - (h) any insurance excess payable in relation to a claim made by either the Customer or the Contractor in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or the Contractor's.
- 31. Insurance and Damage Waiver**
- 31.1 The Customer hires the Equipment at the Customer's own risk and indemnifies the Contractor against any and all loss in respect of or damage to the Equipment, including any consequential loss, unless the Customer elects to pay a Loss, Theft, and Damage Waiver ("LTD Waiver").
- 31.2 LTD Waiver is not insurance, but is an agreement (where applicable under a separate agreement) by the Contractor that the Customer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the LTD Waiver Excess. The Customer is not entering into a contract of insurance with the Contractor by paying for the LTD Waiver.
- 31.3 The Customer agrees with the Contractor that the use of Equipment carries with it dangers and risks of injury, and the Customer agrees to accept all dangers and risks.
- 31.4 The Contractor will maintain current insurance policies in respect of the Equipment to its full insurable value.
- 31.5 In the event that the Equipment provided by the Contractor is the subject of an insurance claim made by the Contractor, as a result of any action or inaction of the Customer, then the Customer accepts full liability for the value of Equipment (or part thereof) that is lost, stolen or damaged in any way any during the entire rental term, irrespective of whether the insurance claim is successful.
- 31.6 Subject to clause 31.7 a LTD Waiver charge (fifty percent (50%) of the Contractor's dry hire rates) will be applied to all dry hire.
- 31.7 The Customer shall not be required to pay the LTD Waiver Fee if the Customer produces a certificate of currency (COC) for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the hire period for an amount not less than the full new replacement value of the Equipment. The COC must be provided to the Contractor prior to the supply of Equipment by the Contractor.
- 31.8 Where the Customer has paid the LTD Waiver Fee, the Contractor will waive the Contractor's right to claim against you for loss, theft or damage to the Equipment if:
 - (a) the Customer has promptly reported the incident to the Police and provided the Contractor with a written Police report within twenty-four (24) hours of the time when the Hirer first became aware of the loss of or damage to the Equipment;
 - (b) the Customer has co-operated with the Contractor and provided the Contractor with details of the incident, including any written or photographic evidence that the Contractor requires;
 - (c) the loss, theft or damage does not fall into one or more of the circumstances in clause 31.10; and
 - (d) the Customer has paid to the Contractor the LTD Waiver Excess.
- 31.9 The LTD Waiver Excess for each item of Equipment is the amount equal to:
 - (a) five thousand dollars (\$5000) or (if the replacement cost of the Equipment is less than five thousand dollars (\$5000) the replacement cost of the Equipment; OR
 - (b) fifty percent (50%) of the cost of the repairs (if the Equipment is partially damaged and can be repaired) OR fifty (50%) of the full new replacement cost of the Equipment (if the Equipment is lost, stolen, or damaged beyond repair; and
 - (c) the excess is subject to increase where the Equipment is more than a 100km from the Contractor depot or if in the instance of a tip truck when the hoist has been engaged or the truck is tipping; and
 - (d) whichever is the greater.
- 31.10 Even if the Customer has paid the LTD Waiver Fee, the Contractor shall not waive the Contractor's rights to claim against the Customer for loss, theft or damage to the Equipment and the LTD Waiver shall not apply if the loss, theft or damage:
 - (a) has arisen as a result of the Customer breaching a clause of this hire agreement;
 - (b) has been caused by a negligent act or omission by the Customer;
 - (c) has arisen as a result of the Customer's use of the Equipment in violation of any law(s);
 - (d) has been caused by the Customer's failure to use the Equipment for its intended purpose or in accordance with the Contractor's instructions or the Manufacturer's instructions;
 - (e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;
 - (f) has been caused by a lack of lubrication or a failure to service or properly maintain the Equipment
 - (g) has been caused by a collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;
 - (h) has been caused by the overloading of the Equipment or any components thereof;

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- (i) is to motors, or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in current or the use of under rated or excessive lengths or extension leads with the electrical Equipment;
 - (j) is caused by exposure to any caustic or corrosive substance, such as cyanide, salt water, acid etc;
 - (k) is caused by vandalism or criminal damage;
 - (l) is to tyres or tubes (including, but not limited to, blowout, bruises, cuts, kerbing or other caused arising from the use of the Equipment);
 - (m) is to glass;
 - (n) is caused by the wilful actions of the Customer, their employees, sub-contractors or agents.
- 31.11 The Customer accepts full responsibility for and shall keep the Contractor indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage or loss of the Equipment, and/or damage or loss to property arising out of the use or provision of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons, particularly in the event that clauses 31.1 to 31.10 are voided for any reason.