

Credit Account Application and Credit Agreement

Agreement between Electrical Inspection Services Limited

AND _____ **(the Client)**

Section 1 Client Details

Sole Trader Partnership Company Other Re-open

Trading As: _____ Company No: _____

Commencement Date of Business: _____

Estimated Monthly Purchases: _____

Delivery Address: _____

Postal Address: _____

Business ph: _____ Mobile ph: _____

Email: _____

Accounts Contact: _____

Note: We prefer to email all invoices.

Section 2 Acceptance of Terms of Trade

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Electrical Inspection Services Ltd (EIS) which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/ shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

Directors/Owners Full Name:	Signature:	Date of Birth	Date
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

Section 3 Trade References

Please submit the names of THREE suppliers (Referees) with whom the Client currently holds credit accounts (do not include financial institutions, credit card companies, HPs, service stations, phone companies or utility companies). By submitting these names the Client authorises EIS to request and receive information from the Clients' Referees and from any other third party regarding the credit worthiness and business practices of the Client.

Name of Referee:	Account No or Contact Name:	Telephone Number:
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

Section 4 Personal Guarantee

IN CONSIDERATION of Electrical Inspection Services Ltd and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

_____ ("the Client") *[Insert Company Name In Box Provided]*

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to the Supplier of all moneys which are now owing to the Supplier by the Client and all further sums of money from time to time owing to the Supplier by the Client in respect of goods and services supplied or to be supplied by the Supplier to the Client or any other liability of the Client to the Supplier, and the due observance and performance by the Client of all its obligations contained or implied in any contract with the Supplier, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to the Supplier the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the Goods to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to the Supplier registering any interest so charged. The Guarantor irrevocably appoints the Supplier and each director of the Supplier as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Supplier may reasonably require to:
 - a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register
 - b) register any other document required to be registered by the PPSA or any other law; or
 - c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Supplier on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Supplier in connection with:
 - a) the supply of goods and/or services to the Client; or
 - b) the recovery of moneys owing to the Supplier by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees costs of collection and legal costs; or
 - c) moneys paid by the Supplier with the Client's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Client, and a third party or any combination thereof, over the supply of goods and/or services by the Supplier to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

1. **I/We have received, read and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
2. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Supplier by the Client and all obligations herein have been fully paid satisfied and performed.
3. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Supplier's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
4. If any payment received or recovered by the Supplier is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Supplier shall each be restored to the position in which they would have been had no such payment been made.
5. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
6. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we are liable for all amounts owing (both now and in the future) by the Client to the Supplier.**
7. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
8. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

Guarantor 1

Signature: _____

Name: _____

Address: _____

Dated: _____

Guarantor 2

Signature: _____

Name: _____

Address: _____

Dated: _____

Witnessed in the Presence of:

Signature of Witness: _____

Name of Witness: _____

Address of Witness: _____ Date: _____

1. Definitions

- 1.1. "Supplier"** means Electrical Inspection Services Ltd its successors and assigns or any person acting on behalf of and with the authority of Electrical Inspection Services Ltd.
- 1.2. Client"** shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Supplier to the Client.
- 1.3. "Guarantor"** means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4. "Goods"** means all Goods supplied by the Supplier to the Client (including but not limited to reports and certificates, and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Supplier to the Client.
- 1.5. "Equipment"** means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.6. "Services"** means all services supplied by the Supplier to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7. "Price"** means the price payable for the Goods as agreed between the Supplier and the Client in accordance with clause 4 of this contract.
- 1.8. "Terms"** means these terms and conditions.

2. Acceptance

- 2.1.** Any instructions received by the Supplier from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Supplier shall constitute acceptance of the Terms unless such acceptance is expressly excluded.
- 2.2.** Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable under these Terms.
- 2.3.** Variations to the Terms may only be made with the written consent of the Supplier.
- 2.4.** If there is anything in the Client's order that contradicts these Terms, the specific terms shall apply.
- 2.5.** Any third party acting on behalf of the Client shall also be held liable for the payment of the invoice in the event the Client defaults on payment.

3. Client Acknowledgements

- 3.1.** The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practices). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
- 3.2.** The Client acknowledges and agrees that the Supplier's inspection and certificates/reports are based on the condition of the structure, appliance or property on the day and time of the inspection. Any modification or changes made to the electrical systems in the structure, appliance or property may invalidate the certificate and/or report provided by the Supplier. The Client further agrees that any re-inspection Services required after modification shall incur additional charges.
- 3.3.** The Client acknowledges that Thermal Image Technology cannot display all hidden faults, as operational conditions can affect the results and the Supplier cannot guarantee that all faults will show up in the test results. Use of any image testing results supplied to the Client is at the Client's risk. The Supplier has no liability to the Client in any way whatsoever out of the client's use of, or reliance on, image testing results.

4. Price And Payment

- 4.1.** As the Supplier's sole discretion the Price shall be either:
- as indicated on invoices provided by the Supplier to the Client in respect of Goods supplied by the Supplier; or
 - the Supplier's quoted Price (subject to clause 3.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.
- 4.2.** The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to a lack of restricted access to the worksite or required area of the worksite, or as a result of increases to the Supplier in the cost of materials and labour) will be charged at the cost incurred by the Supplier, to the extent such variations were not allowed for in the Supplier's quotation, and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3.** As the Supplier's sole discretion:
- payment shall be due on delivery of the Goods; or
 - payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.4.** Time for payment of all the amount and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5.** Payment will be made by cash, by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Supplier.
- 4.6.** All payments will be without deduction or set off.
- 4.7.** GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

- 5.1.** At the Supplier's sole discretion, delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Supplier or the Supplier's nominated carrier).
- 5.2.** At the Supplier's sole discretion the costs of delivery are:
- in addition to the Price; or
 - for the Client's account.
- 5.3.** The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged, or the Supplier is unable to access the site to carry out the Services, then the Supplier shall be entitled to charge a reasonable cancellation fee, and the additional costs incurred by the Supplier in redelivering the Goods or revisiting the site to commence the Services.
- 5.4.** Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5.** The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6.** The Supplier shall not be liable for any loss or damage whatsoever suffered by the Client due to failure by the Supplier to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Supplier.

6. Risk

- 6.1.** If the Supplier retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery. The Client is responsible for insuring the Goods upon delivery.
- 6.2.** If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

7. Access

- 7.1.** The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to perform the Services.
- 7.2.** The Supplier shall not be liable for any loss or damage to the work site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Supplier.

8. Underground Locations

- 8.1.** Prior to the Supplier commencing any work, the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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 site.
- 8.2.** The Client indemnifies the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

9. Title

- 9.1.** The Supplier and Client agree that ownership of the Goods shall not pass until:
- the Client has paid the Supplier all amounts owing for the particular Goods; and
 - the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.
- 9.2.** Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Goods shall continue.
- 9.3.** It is further agreed that until ownership of the Goods passes:
- where practicable the Goods shall be kept separate and identifiable;
 - the Supplier may give notice in writing to the Client to return the Goods or any of them to the Supplier. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease;
 - the Client is only a bailee of the Goods and the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Supplier for the Goods, on trust to the Supplier; and
 - if the Goods are converted into other products, the parties agree that the Supplier will be the owner of the end products; and

- if the Client fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may (as the invoice of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and the Supplier will not be liable for any reasonable loss or damage suffered as a result of any action by the Supplier under this clause.

10. General Security Agreement

- 10.1.** The Client acknowledges that the Supplier is irrevocably authorised by the Client to register a General Security Agreement over all of the Client's assets, together with a General Security Agreement over all of the assets of any Guarantor. The terms of such General Security Agreement shall be on the terms contained in the most recent General Security Agreement produced by the Auckland District Law Society.

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

- 11.1.** The Client acknowledges and agrees that:
- these Terms constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Goods, previously supplied by the Supplier to the Client (if any) and all Goods that will be supplied in the future by the Supplier to the Client.
- 11.2.** The Client undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - not register a financing change statement or a charge demand without the prior written consent of the Supplier; and
 - immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

- 11.3.** Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.

- 11.4.** The Client waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148 of the PPSA.
- 11.5.** The Client unconditionally attests any actions taken by the Supplier under clauses 11.1 to 11.4.

12. Security and Charge

- 12.1.** Despite anything to the contrary contained herein or any other clauses which the Supplier may have however:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under these terms and conditions.
 - should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.
 - the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Client and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13. Client's Disclaimer

- 13.1.** The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

14. Defects

- 14.1.** The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.
- 14.2.** Goods will not be accepted for return other than in accordance with 14.1 above.

15. Warranty

- 15.1.** For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by or responsible for any terms, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

16. Consumer Guarantees Act 1993

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

17. Intellectual Property

- 17.1.** Where the Supplier has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Supplier, and shall only be used by the Client at the Supplier's discretion.
- 17.2.** The Client warrants that all designs or instructions to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the possession of the Client or the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 17.3.** The Client agrees that the Supplier may use any documents, designs, drawings or Goods created by the Supplier for the purposes of advertising, marketing, or entry into any competition.

18. Default & Consequences of Default

- 18.1.** Interest on payments due under clause 4 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2.** In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Supplier.
- 18.3.** If the Client defaults on payment of any invoice when due, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis and the Supplier's collection agency costs.
- 18.4.** Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Supplier may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 18.5.** If any amount remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10% of the amount overdue (up to a maximum of \$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 18.6.** Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Compliance with Laws

- 19.1.** The Client and the Supplier shall comply with the provisions of all statutes, regulations and by-laws of government, local and other public authorities that may be applicable to the works.
- 19.2.** The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 19.3.** The Client will ensure that the work site will comply with all applicable health and safety laws.

20. Cancellation

- 20.1.** The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2.** In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 20.3.** Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will not be accepted once production has commenced.

21. Privacy Act 1993

- 21.1.** The Client and the Guarantor authorises the Supplier to:
- collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors' creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - disclose information about the Client and/or Guarantors, whether collected by the Supplier from the Client and/or Guarantors directly or obtained by the Supplier from

- any other source, to any other credit provider or any credit reporting agency for the purpose of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.
- 21.2.** Where the Client and/or Guarantors are an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3.** The Client and/or Guarantors shall have the right to request the Supplier for a copy of the information about the Client and/or Guarantors retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client and/or Guarantors held by the Supplier.

22. Construction Contracts Act 2002

- 22.1.** Where the Construction Contracts Act applies to Goods supplied, the Client hereby expressly acknowledges that:
- 22.1.1.** The Supplier 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 Client, and:
- the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
 - the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- 22.1.2.** If the Supplier suspends work, it:
- is not in breach of contract; and
 - is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - is entitled to an extension of time to complete the contract; and
 - 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 and an adjudicator's determination has not been complied with.
- 22.1.3.** If the Supplier exercises the right to suspend work, the exercise of that right does not:
- affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or
 - enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision.

23. Equipment Hire

- 23.1.** The Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. If the Equipment is not returned to the Supplier in the same condition it was delivered, the Supplier may charge the Client the full cost of repairing the Equipment. In the event Equipment is not returned at all the Supplier may charge the Client the full cost of replacing the Equipment.
- 23.2.** The Client shall:
- keep the Equipment in its possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - not alter or make any additions to the Equipment or in any way interfere with the Equipment.
 - keep the Equipment, complete with all parts and accessories, clean and in good order, and comply with any maintenance schedule advised by the Supplier to the Client.
- 23.3.** The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to obtain adequate insurance covering any loss or damage to the Equipment and any loss, damage or injury to property or persons arising out of the use of the Equipment. The Client will not act in any way which would invalidate its insurance.

24. Limitation of Liability and Indemnification

- 24.1.** The Supplier's liability to the Client in relation to any loss of any kind whatsoever (direct or indirect) suffered by the Client as a result of any breach of the Supplier of obligations (whether express or implied) pursuant to any contract between the Supplier and the Client, including (without limitation) any cancellation of any contract, any negligence by the Supplier (including the Supplier's servants, agents or contractors), and also including any loss of profit, damage or injury caused to the Client's servants, agents, contractors, buyers, visitors, tenants, trespassers or any other persons, shall not exceed the greater of either:
- the cover provided and paid out in relation to any claim by the Client by the Supplier's professional indemnity insurers; or
 - the amount of the Supplier's invoice to you in relation to the Goods or Services in relation to the specific contract in question.
- 24.2.** The Client indemnifies the Supplier for any loss suffered by the Supplier in connection with Goods supplied under these Terms.

25. General

- 25.1.** If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legal and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2.** These Terms 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.
- 25.3.** The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.4.** The Supplier reserves the right to review these Terms at any time. If changes are made to these Terms, the Supplier will notify the Client of such change.
- 25.5.** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 25.6.** The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.