

## PROTECTION SECURITY SYSTEMS LIMITED

### SUPPLY OF GOODS AND SERVICES: TERMS OF TRADE

1. **How these Terms Apply** These Terms of Trade (**Terms**) are to be read together with any specific exclusions listed in our Quote, the invoice payment terms on your Invoice, and any special terms we may state in our Quote.
2. **Our Contract** Your acceptance of the Quote and these general Terms together constitute our contract with you (this **Contract**). This Contract governs the agreement between **PROTECTION SECURITY SYSTEMS LIMITED (Company Number 7053220) (Us)** and you, the named customer in the Quote or on any Invoice, in respect of the Goods and Services.
3. **Us** Any reference to 'us' in these Terms include any contractor, employee, assignee, transferees or approved subcontractor that we use.
4. **Plans and specifications** All plans and specifications accompanying these Terms, including any variations to such plans and specifications, form part of this Contract.
5. **Business Days and Calendar Days** Where we refer to '**Business Day(s)**' this means a day that banks in the local area or territory are usually open for business and by default excludes statutory holidays in the local area or territory. A 'calendar day' is any day and includes any weekend or statutory holiday and is used for the purposes of counting overdue accounts (among other things).

### GOODS AND SERVICES WE SUPPLY

6. **Goods and Services** Our Goods and Services may include some or all of the following:
  - a. Supply of security components, units and systems (and any fixtures or accessories required in connection with these) (**Goods**); and/or
  - b. Design of security systems in accordance with your specifications; and/or
  - c. Installation of Goods into your nominated premises; and/or
  - d. Repair services in relation to Goods or Services supplied by us or any third-party; and/or
  - e. Ongoing monitoring services of security systems (**Monitoring Plan**); and/or

- f. Scheduled maintenance services of security systems (**System Service Plan**); and/or
  - g. System upgrade and modification services; and/or
  - h. any other works, goods or services performed or stated to be supplied as described in any Quote or Invoice (these are the Services or the Goods as the context requires).
7. **Monitoring Plans and System Service Plans** Where you have selected to purchase one or more of the above plans from us (either is a **Plan**), these are subject to the following terms:
    - a. **Frequency** The Plan services will be performed at the frequency agreed in any Plan currently in force with you or agreed in any new Quote; and
    - b. **Some Plan services will be performed remotely** Certain system maintenance and monitoring services under a Plan may be performed remotely or on-premises as required (and at our sole discretion based on the current system requirement as at that time); and
    - c. **On-Premises call-outs may be required** Where you are on a Plan and we need to attend your premises to perform a Plan service, we will inform you of any on-premises call-out required where there is a specific issue that we cannot rectify, remedy or troubleshoot remotely. You accept and acknowledge that we may not contact you each time we perform a routine monitoring or maintenance activity. In this case, the terms set out in clause 11 (*Premise and Remote System Access*) shall apply; and
    - d. **Reports** These are available in the format and at the frequency agreed in your applicable Plan or on request (as applicable); and
    - e. **System down-time during Plan services** You accept and acknowledge that some system down-time may be experienced by you and latency may be slower due to any software or patch updates performed on any system during any scheduled maintenance or monitoring that occurs during the Plan services; and
    - f. **Service partners** We use accredited service partners to deliver some of the

Plan service. By signing up to a Plan with us, you accept and acknowledge that the monitoring and maintenance services will be performed by our nominated service partners. They will be subject to the same terms and conditions relating to privacy and confidentiality of the system information and data; and

- g. **Cancellation of a Plan** You may cancel your Plan at any time by emailing us with at least **thirty (30) calendar days' notice** in writing by email. We inform you of the date that we shall remove our access permissions following the expiry of your cancellation notice period; and
  - h. **Final cancellation payment** Where we have agreed that your Plan fee may be paid in instalments, you remain liable to pay the balance of your Plan fees up to the end of the cancellation notice period in accordance with Clause 66 (*Amounts Owing for cancelled or terminated Services*); and
  - i. **Plan Renewal** Your selected Plan will auto-renew. Any renewal will be on the current, published Plan price for your chosen service as at the date of renewal (we will inform you of any price changes in advance); and
  - j. **Suspension of Plan** If your applicable Plan fee is not paid when it becomes due and payable or a recurring payment method is rejected or fails, we reserve our rights to suspend your Plan in accordance with clause 64 (*Suspension of Services*).
8. **On-Demand Fault and Maintenance Services** Where you do not have a System Services Plan with us, we can supply fault and emergency maintenance Services on-demand at your request subject to the following terms:
- a. the availability of an on-call engineer; and
  - b. the terms set out in clause 11 (*Premise and Remote System Access*) shall apply; and
  - c. where the issue is not due to any defect or warranty issue caused by us or our components, a call-out fee may apply.
9. **Privacy Act compliance** We shall, always, comply with the Privacy Act 2020. Any personal information accessed from any security system during the performance of our Services (by us or our nominated monitoring service partners) shall be solely for the purpose of the

installation, monitoring or maintenance of the Goods or any existing system. We shall not store, record, download, share, release or otherwise use such personal information for any other purpose.

10. **Updates on Timing of Services** We will advise you of any anticipated delay to the performance of the Services. In the event any delay occurs that exceeds the anticipated or proposed date agreed by us, you acknowledge and agree that you shall not be entitled to any damages (liquidated damages, or any other type of damages or costs) in respect of the delay.

#### **PREMISES AND REMOTE SYSTEM ACCESS**

11. Where we require access to your premises or remote access to your system/s for the performance of the Services, some or all the following terms apply (as the context requires):
- a. **on-premises access** where we need to visit your nominated premises, we will agree a date with you or your nominated representative for us to attend the applicable premises; and/or
  - b. **emergency and after hours call-outs** where an emergency or after-hours call out is requested or required from us to your nominated premises, we will require you to grant us permission to access the interior of any applicable premises in advance; and/or
  - c. **health and safety** we undertake to comply with any health and safety notices issued by you; and
  - d. **disarming or disablement of system** you accept and acknowledge that we may need to disarm or disable your security system for the purposes of performing our Services; and
  - e. **remote access** you accept and acknowledge that we may require remote access to your security system/s (regardless of whether we are installing a new system or updating, replacing or modifying an existing system) which may include access to system information or data.
12. **System information and data not retained by us** You accept and acknowledge that we will have access to system information and data (including, but not limited to passwords, codes, key holder details or any other login details to

a security system) in the course of our Services, **however, we shall not retain records of such system information for your later retrieval in the event you lose it or cannot retrieve it.**

## PRICE AND FEES

13. **Prices** Our fees may be comprised of:

- a. a quoted order for a security system as a fixed price; or
- b. a cost estimate for certain Services; or
- c. a call-out rate chargeable at our current hourly or call-out rate (pricing available on request at any time)

all of which are, as the context requires, the **Total Price** for the purposes of our invoices.

14. **Prices may vary** A quoted or cost estimated price is always subject to a Variation or any increase to our hourly or call-out rate.

15. **Plan Fees** The fees for this type of ongoing subscription service are charged in accordance with the following terms:

- a. all Plans are charged at the agreed recurring fee and on the frequency agreed and specified in your applicable plan Quote (or as agreed on any legacy plan you have with us); and
- b. the Plan fees are payable in arrears; and
- c. the Plan payment method may be updated or altered to be automatic payment, recurring invoice or direct debit plan at any time at our sole discretion provided we give you thirty (30) calendar days' notice of such change; and
- d. the Plan fees shall continue to accrue and be payable until your cancellation period has expired.

16. **On-Demand Fault and Maintenance Services** These services are performed on request and are subject to the following terms:

- a. these services are chargeable at our hourly rate or call-out rate (as the context requires) current as at the date of the Service (rates available on request); and/or
- b. where a call-out is requested, out-of-hours, weekend or public holiday rates may apply and will incur a higher rate than our standard hourly rate or call-out rate; and/or

- c. we will not be able to provide a fixed fee or quote for such services due to their ad-hoc and unplanned nature.

17. **Missed appointment fees** Where we need to attend your premises and have supplied reasonable notice in advance, and you fail to make the necessary arrangements to enable us to perform our Services, we reserve the right to apply a fee for a missed appointment.

## YOUR OBLIGATIONS TO US

18. **Pay Us the applicable Fees** You agree and accept that you will pay the applicable fees, price or other costs as stated in the applicable Invoice or Plan payment request issued to you.

19. **Supply contact and keyholder information** The following are excluded from our Services and are your responsibility to arrange or procure (as the context requires):

- a. **Access information for existing systems** Supply of access information to existing security systems that we are to replace or maintain as part of our Services; and
- b. **Emergency contact information** Provision of emergency keyholder or contact information to us to enable us to make contact for any out-of-hours call outs or monitoring alerts we perform as part of our Services; and

20. **Arrange and manage back-up and retrieval of system information and data** Management of any back-up or download of any system information or data (including, but not limited to passwords, codes, key holder details or any other login details to a security system) required for your business purposes; and

21. **Arrange suitable connectivity** Provision of a suitable and working broadband fibre, copper, cellular, fixed wireless or other applicable telecommunications and/or broadband connection to enable your system performance (including, where selected, the performance of any monitoring services by us); and

22. **Limit order changes** You acknowledge and accept that if you request a Variation to the volume or specifications of your order once you have accepted a Quote, we may not be able to accommodate the completion of your order in the original timeframe estimate supplied to you as a result or within the original price stated in our Quote. See the 'Variations'

section for more detail on what constitutes a Variation to your order; and

23. **Supply accurate and timely information** Where we require specific information to perform our Services, you must ensure it is accurate and complete. We are entitled to rely on any documents, verbal communication, records, drawings, or other data that you or any third-party you nominate to supply such information to us. We are not liable for any costs and expenses that result from variations, additions or changes to the supply of our Goods and Services where such variations are the result of such an inaccuracy or incompleteness and such costs or expenses will be treated as a Variation in accordance with these terms; and
24. **Obtain all building consents** Where any Services require a building or other local or regional authority consent for the installation of any Goods or systems, you will be responsible for procuring all required consents. We will request evidence of the consent prior to the installation Services commencing.
25. **Make your premises safe and accessible** where any Services are to be performed at your premises, you will be responsible for ensuring we have access to the site and arranging any required consents for us to attend the premises. You must ensure any premises we visit or perform Services at comply with all relevant health and safety requirements and you have informed us of any safety hazards at the premises.
26. **Meet any variation costs related to non-performance of these obligations** If you do not meet your customer obligations set out in this section or as reasonably requested by us to enable performance of our Services, any and all loss, damage and/or costs (including any stand-down or call-out fees incurred by us due to any delay) will be treated as a Variation and will be your sole responsibility to meet such costs or expenses.

## INVOICING

27. **Time and Method for Payment** All amounts specified in an Invoice will require payment on specified due date (**Amounts Owing**). We will issue Invoices to you by email. You may pay by any of the methods specified on the Invoice.
28. **No trade or extended credit as standard** We do not offer trade or extended credit terms (unless by prior agreement).

29. **Payment of balance of Total Price on completion of order** You agree and accept that you are liable to pay the balance of the Total Price (including any delivery or installation costs applicable stated in our accepted Quote and any costs included in any Variation Order issued after acceptance of the Quote) from the date of completion of your order.
30. **No Set Off or Deduction Payment of Amounts Owing** Amounts owing which are due and payable must be made without set-off or deduction of any kind. You also agree that you will not be entitled to withhold payment in respect of any undisputed amount.
31. **Disputes on invoices** We must be notified in writing within **7 (seven) Business Days** from the date you first received the invoice of any dispute. You agree to identify the specific cause of the disagreement and pay when due that portion of the invoice that is not in dispute.
32. **Non-Payment of Amounts Owing** If you do not pay an Amount Owing by the due date and you have not issued us with any valid payment schedule or any later date we have agreed in writing, this becomes an Overdue Amount Owing. After a period of **7 (seven) Business Days**, we shall have the right to apply late payment interest at a rate of 8% above the standard BNZ bank rate at the time. This shall be calculated daily and compound monthly at that rate if we elect to do this. This applies before and after any judgment (if applicable).
33. **Debt Collection or Recovery Costs** If an Overdue Amount Owing remains unpaid for **14 (fourteen) Business Days or more**, we reserve our rights to engage the services of a debt collection agency or solicitor to take proceedings to recover the Overdue Amount Owing. You will be liable for the costs incurred by us in the collection of any unpaid amounts including but not limited to legal costs, debt collection fees and internal administration fees.
34. **Administration Fees** In the event we are obliged to perform any additional actions to recover any monies owed by you, we reserve the right to apply reasonable administrative fees for phone calls, texts, emails and in-person visits to follow up and recover any Overdue Amount Owing in addition to any costs or expenses stated in any clauses above.

## VARIATIONS TO TOTAL PRICE OR TIME TO PERFORM THE SERVICES

35. **Variations to Total Price or Time** We reserve the right to issue a Variation Order to change the Total Price or extend the time to complete the Services in the following circumstances:
- a change, amendment, or alteration, of your order which results in a change to the specifications and design of the system, after you have accepted our Quote; and/or
  - increases to us for the cost of materials or components which are beyond our reasonable control or which we could not have foreseen and priced into the Quote at the time of issue and acceptance; and/or
  - a requirement for us to extend the time it takes to complete the Services and supply the Goods due to the impact of any other changes listed above or which are, in our reasonably opinion, a Variation.
36. **All Rights Reserved to Decline a Variation** Where a Variation has been requested by you directly to extend scope, decrease a timeframe, or increase labour units, we reserve our right to decline to treat this as a Variation. In some circumstances, we may elect to treat the request as a new scope of Services and will agree with you if a new Quote is to be supplied.
37. **How We Will Confirm a Variation** We shall supply you with a written Variation Order stating the changes to the Quote, how the price change has been or will be calculated and state any additional costs to accommodate the Variation. This will be supplemental and in addition to any Quote issued prior to the Variation date.

## PRODUCT GUARANTEE AND WARRANTIES

38. **Consumer Guarantees Act** Where you are a customer in trade or business and the Goods and Services acquired from us under this Contract are for business purposes, therefore the provisions of the Consumer Guarantees Act 1993 (**CGA**) shall not apply. Otherwise, the CGA shall apply.
39. **Product Warranties only apply to Goods supplied by Us** We only extend a warranty of any Goods or guarantee of our Services for Goods that have been supplied and installed by us.

40. **Goods will be new** We warrant that the Goods will be new and unused and will function in accordance with the applicable technical specifications issued by us or supplied on behalf of any original equipment manufacturer (**OEM**) and installation instructions we may issue from time to time (subject to any exclusions listed in these terms).
41. **Manufacturers' and third-party warranties** Where applicable, any OEM warranties shall be held on trust for you and we shall manage any warranty claim on your behalf during the Defect Liability Period (see below).
42. **Defect Liability Period** If the Goods are defective, we will remedy the defect at no cost to you for a period of 12 months or the length of manufacturer's warranty period for the Goods or Services (whichever is longer) (**Defect Liability Period**) from the date of completion of performance of the Services, provided that:
- you inform us of any defect in writing within the Defect Liability Period; and
  - you arrange, at your own cost, the return shipment of the defective Goods (if not yet installed) to the location specified by us; or
  - we shall agree a process to inspect the defective Goods if already installed.
43. **Rectification of Defective Goods or Services** If we inspect any Goods and confirm that there is a manufacturer's defect (which is not subject to the exclusions and limitations set out in these terms), the following shall apply:
- we will, at our election, either replace the Goods or repair the Goods; or
  - for Services, where any defective issue is a result of our poor workmanship, we will re-perform the Services at our sole cost, provided that
  - any re-installation of the replacement Goods shall be performed at your sole cost (where there is no defective workmanship); and
  - no refund is available for any Goods or Services; and
  - the remedies listed in the clause above are the sole remedy available to you and are expressly in lieu of all other conditions and warranties, express or implied or statutory.

**44. Limitations to Defects and Exclusions** Any product guarantee offered under these terms or at law will not apply where:

- a. we have specifically notified you of any additional and specific tolerances in our Quote, bill of materials or product specifications issued and these are present or detected in the Goods; and/or
- a. the fault or defect is not notified to us within the applicable Defect Liability Period; and/or
- b. the fault or defect is a result of:
  - (i) something done by you or someone else, that does not conform to our recommended installation instructions; and/or
  - (ii) any person not maintaining the building structure in which our Goods are installed in a sound and reasonable condition in such a way that it caused the defect; and/or
  - (iii) something beyond human control that occurred after completion of our Services or works, for example an extreme weather event or natural disaster or natural event such as an earthquake, lahar or tsunami that causes the defect; and/or
  - (iv) any part of the Goods installed by you being misused, abused, neglected, or damaged during delivery, collection, off-loading or during your installation; and/or
  - (v) the Goods not being maintained in accordance with any care or guarantee documents; and/or
  - (vi) the Goods being repaired, modified, reinstalled, or reconfigured by anyone other than us.

**45. Warranty Exclusion relating to System Design**  
We do not warrant that we are a structural designer in relation to the building structure in which the Goods or any system design are to be installed. We accept no liability for any design choice to use our Goods for the construction of the building structure in which they will be installed.

#### **RISK AND OWNERSHIP**

**46. Insurance Risk** All risk in the Goods (plus any materials and equipment to supply the

Services) remains with us during the performance of the Services.

**47. Risk in Goods** All risk related to the Goods, including the obligation to insure them, passes to you as at the date of installation or delivery or collection (as applicable). You shall be liable for any loss or damage to the Goods connected to the handling or use of the Goods after you have taken possession of the Goods at the nominated installation location or collection location.

**48. Ownership of Goods will transfer on payment of final Amounts Owing** We own the Goods until you have paid for them in full. No beneficial or equitable ownership or title in the Goods will pass to you until full and final payment of the Total Price has been received by us. Until the Amounts Owing have been paid, you hold the Goods as trustee and agent for us.

**49. Right to Seize Goods if there are Amounts Owing** If you fail to comply with this Contract in relation to payment of Amounts Owing then we may take reasonable action to seize possession of the Goods (to the extent they have not been installed into any building structure) and retain, sell or otherwise dispose of such Goods. By entering into this Contract, you acknowledge and agree that you grant us or our agents or approved contractors an unrestricted right and licence to enter your premises (if this is the location where the Goods are being stored) without notice to identify and remove the Goods that we still own.

#### **PERSONAL PROPERTIES SECURITIES REGISTER**

**50. Creation of a security interest** You acknowledge that these terms create a security interest in the Goods supplied to you by us under the terms of this Contract to secure the payment of any Amounts Owing. This security interest will continue until we give a final release following receipt of the Total Price.

**51. Right to Register a Financing Statement** You consent to us effecting a registration of a financing statement in respect of the security interest created by this Contract (itself a Security Agreement) on the Personal Property Security Register (**PPSR**) under the provisions of the Personal Property Securities Act 1999 (see <https://ppsr.companiesoffice.govt.nz/> for more information). You agree to provide all assistance reasonably required by us to effect registration.

52. **Waiver of Right to Receive a Verification Statement** You waive the right to receive notice of a Verification Statement in relation to any registration on the PPSR. You further agree that you will have none of the rights under ss114(1Xa), 116, 117(1Xc), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA. Where we have rights in addition to those in Parts 9 of the PPSA, you agree that those rights shall continue to apply, and in particular will not be limited by s109 of the PPSA.

## INTELLECTUAL PROPERTY

53. **Intellectual Property** For the purposes of this clause, 'Intellectual Property' includes any trademarks, patents, designs, service marks, trade names, copyrights, know how, company names, trade secrets, domain names, internet IP or URL addresses, rights in confidential information, and any other Intellectual Property rights, whether registered or unregistered, and including all applications.
54. **Intellectual Property ownership** Ownership of the copyright in any drawings, specifications, manuals or installation instructions, documents, assembly methodology under or in connection with the Goods or Services shall remain with us.
55. **Right to use our Intellectual Property** You shall have a royalty-free irrevocable license to use and reproduce the installation manuals or specifications solely for the purposes of installing the Goods.
56. **No licence to use Intellectual Property for non-installation purposes** You will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Goods or assembly methodology.

## YOUR LIABILITY TO US

57. **Your Indemnity to us** You indemnify us and hold us harmless in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses, and costs (including legal fees on a full indemnity basis), in connection with any of the following:
- any breach of your obligations under these Terms including, to avoid doubt, your obligation to pay us any Amounts Owing; and/or
  - any third-party claims made in connection with or arising out of your use of the Goods or Services.

## LIMITATION OF OUR LIABILITY

58. **Delays to Performance of Services** If the Services cannot proceed within the estimates date and time for any reason, we will discuss this with you, and this will be a Variation. We exclude liability to you for any claims, losses, damages, and costs (direct, indirect, or anticipated) incurred by you for the Services not taking place as planned.
59. **Damage to Property during Delivery** Our total aggregate liability to you arising out of or in connection with the delivery of any Goods to any Property whether in contract, any indemnity, tort (including negligence) by statute or otherwise at law or in equity is limited to the Total Price of the Goods or Services or the actual direct costs incurred by you (whichever is the lower amount). This obligation will be reduced or eliminated to the extent that your acts or omissions, or any health & safety risk or hazard or any access restrictions that we or our delivery providers were not advised of relating to the Property contributed to such loss or damage.
60. **Exclusion of Our Liability** To the fullest extent permitted by law, and subject to our obligations during the Defect Liability Period or under any applicable law that imposes guarantees on us, we exclude all liability to you for any direct or indirect claims, expenses, losses, damages and costs (including any incidental, special and/or consequential damages or loss of profits, loss of anticipated savings or loss of expenses suffered or incurred by you resulting (either directly or indirectly) in connection with the Goods and Services.
61. **When Limitations of Liability Cannot Apply** These clauses do not limit our liability to the extent that it cannot be limited at law or such liability arises out of or in connection with any wilful default, fraud or criminal conduct by us.

## CANCELLATION, TERMINATION AND SUSPENSION

62. **Cancellation of an order is at our sole discretion** We reserve all rights to determine if we will accept a cancellation of an order for Goods and Services. This is at our sole discretion and for an installation service, will only be considered such installation has not yet commenced.

This clause does not apply to cancellation of Plans. For details on how to cancel your Plan,

see clause 7 (*Plans for Monitoring and System Maintenance*).

63. **Deposits are Non-Refundable** If we agree to a cancellation of your order for Goods and Services, we will be entitled to retain the following amounts:

- a. the entire Deposit amount; and
- b. an amount equal to 15% of the Total Price quoted to cover our administration and expenses up to and including the date of cancellation of your order.

64. **Suspension of Services by us for Overdue Amounts Owing** If there is an Overdue Amount Owing and such default continues for **14 (fourteen) Business Days** then we shall be entitled to:

- a. suspend any ongoing Plan; and/or
- b. for new system installations, disable or disarm your system access,

each without notice until your Overdue Amount Owing has been paid in full.

65. **Termination of Services by us** We reserve the right to consider an order for Goods and Services or any Plan to have been terminated with immediate effect if:

- a. you fail to pay the Deposit to confirm an order; and/or
- b. there is an Overdue Amount Owing that has not been paid for a period of thirty (30) Business Days; and/or
- c. any of your creditors seize or indicate that they will seize any Goods provided to you that have Amounts Owing against them; and/or
- d. if you become insolvent or bankrupt, convene a meeting with your creditors or make an assignment for the benefit of your creditors or a receiver, manager or liquidator (provisional or otherwise) or similar person is appointed in respect of you or your business or its assets.

66. **Amounts Owing for cancelled or terminated Services** Regardless of the cause for suspension, cancellation or termination of the Services, you shall remain liable for any Amount Owing for such Goods or Services (as applicable), including:

- a. Services which have commenced but have not been completed; and/or

- b. Services already performed; and/or
- c. custom Goods already ordered to your specifications; and/or
- d. the balance of any Plan fees up to the date of expiry of the cancellation notice period.

## DISPUTE RESOLUTION

67. **When this clause applies** The parties agree that any dispute, controversy or claim arising between the parties out of or in connection with this Contract, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a **Dispute**) will only be resolved by following the process described in this clause.

68. **Resolve between contact persons first** Where a dispute arises, either party may give written notice to the other and request a formal meeting with a view to resolving it (a **Dispute Notice**). The party who is the recipient of a Dispute Notice (the **Recipient**) will, within 48 hours of receiving the Dispute Notice, notify the other party to confirm receipt of the Dispute Notice, and both parties will promptly attempt to resolve the dispute by consultation.

69. **Parties can use mediation** If the Dispute is not resolved within ten (10) Business Days (or any longer period agreed by the parties) of receipt of the Dispute Notice by the Recipient, either party may submit the dispute to be resolved by mediation by giving notice to the other party. This notice must be in writing by email or letter only and must be addressed to the party.

70. **Choice of mediator** The mediation will be conducted before a single mediator, on the terms of the Resolution Institute Standard Mediation Agreement (NZ version). The mediator will be agreed between the parties or, failing agreement, within five (5) Business Days of receipt of a Dispute Notice, appointed by the Chair for the time being of Resolution Institute or his/her nominee.

71. **Services to continue to be performed** Except to the extent this Contract expressly permits otherwise, all parties will continue to perform its obligations under this Contract, notwithstanding any dispute. **To avoid doubt, notwithstanding the existence of a dispute, you must still comply with your obligations to pay us in accordance with the terms of this Contract** unless the dispute specifically relates to a disputed amount on an Invoice. In that



case, you must pay the undisputed portion of that Invoice.

72. **Interlocutory relief permitted at any time** Nothing in this Contract will prevent either party from seeking urgent interim relief from a court of competent jurisdiction.
73. **Adjudication** Where this is a 'construction contract' as defined under the Construction Contracts Act 2002, nothing in these terms limits any rights the parties may have to refer a Dispute for adjudication under that act.

## LAW AND ASSIGNMENT

74. **Governing Law** This Contract shall be governed by the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.
75. **Severability** If any provision or part of a provision is illegal or unenforceable, such provision or part of a provision will be severed from this Contract and will not affect the continued operation of the remaining provisions of this Contract.
76. **Entire Agreement** This Contract sets out the entire agreement between the parties.
77. **Construction Contracts Act** To the extent this Contract is a 'construction contract' as defined under the Construction Contracts Act 2002, the terms of that act shall apply.
78. **No right of purchaser to assign or transfer this Contract** You are not permitted to assign, transfer or novate the benefit or burden of this Contract to any other party.
79. **Our right to assign or transfer this Contract** We shall have the right, at any time, at our option and without your consent to transfer, assign or novate this Contract (or any part thereof) and to transfer our rights and obligations to any affiliate or purchasing entity who will replace us for the performance of the obligations under this Contract.
80. **Subcontractors or affiliates may perform part or all of the Services** We shall have the right to use subcontractors or affiliates to perform all or some of the scope of Services to fulfil an order and shall remain fully responsible to you for the supply of the Goods and Services.
81. **Signing Not Required** It is not necessary for any Quote to be signed for these Terms to apply. You are bound by these Terms if you continue to act in a way that is consistent with the arrangement and discussions you have had with us in relation to the Quote, and we have incurred time and expense in procuring materials or commenced any part of the Services or works for you, or if you have paid a Deposit.
82. **Electronic Acceptance** The parties agree that any legal requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017. In this clause the term "legal requirement" has the meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.
83. **Notices must be in writing** Any notice, consent, permission, approval, agreement, instruction, variation, authorisation, request, report or other communication given by a party for the purposes of this Contract will be of no effect unless given in writing. To avoid doubt, the term "in writing" **does not include** text message or other internet or cell phone-based messenger, chat, bot or other services that are not email or registered post.
84. **Deemed delivery of Dispute Notices** An email notification is required to be issued to the contact person stated in the Quote (if discussed by telephone or verbally a follow up email confirming the dispute must be sent). A Dispute Notice may be also delivered to the Recipient by registered post, but a copy of the Dispute Notice must also be sent by email to the Recipient. A Dispute Notice will be deemed to have been received by the recipient: (a) in the case of delivery by registered post, on the date that signature of receipt is recorded; (b) in the case of email, on the first Business Day after sending, unless before then the sender's email server receives notification that the email has not been delivered to the recipient.

END