

TERMS AND CONDITIONS OF TRADE

1 Definitions

1.1 "Contractor" means Mane Contracting Limited is successors and assigns and any person acting on behalf of with the authority of the Contractor.

1.2 "Customer" means the Customer (or any person acting on behalf of with the authority of the Customer) as described on any quotation, work authorisation or other communication as provided by the Contractor to the Customer. The term "Customer" also includes any Guarantor and any Customer and Guarantor shall be joint and severally liable for the obligations in these terms and conditions.

1.3 "GST" means Goods and Services Tax pursuant to the Goods and Services Tax Act 1985.

1.4 "Guarantor" means the person (or persons), or entity who agrees to be liable for the debts of the Customer.

1.5 "Goods" means goods supplied by the Contractor to the Customer and includes goods described on any invoices, quotation, work authorisation or any other communication as provided by the Contractor to the Customer.

1.6 "Services" means all services supplied by the Contractor to the Customer and includes any advice or recommendations and may include the provision of Goods as part of the Services.

1.7 "Price" means the Price payable for the Goods and Services as agreed between the Contractor and the Customer as per any quote or invoice given by the Contractor.

1.8 "PPSA" means the Personal Property Securities Act 1999

1.9 The terms "collateral", "debtor", "financing statement", "financing change statement", "inventory", "proceeds", and "security interest" have the meanings as defined in the PPSA. Purchase Money Security interest (PMSI) has the meaning defined in Section 16 of the PPSA.

2 Acceptance

2.1 Any instructions received by the Contractor from the Customer for the supply of Goods and/or Services or the Customer's acceptance of Goods supplied by the Contractor shall constitute acceptance of these terms and conditions.

2.2 Where more than one Customer has entered into this agreement the Customers shall be jointly and severally liable for all obligations set out in these terms and conditions.

2.3 On acceptance of these terms and conditions they are binding and can only be amended with the written consent of the Contractor.

3 Price

3.1 The Price shall be as indicated on invoices provided by the Contractor to the Customer or the Contractor's quoted Price if such quoted Price is given and accepted by the Customer.

3.2 Should the Contractor become aware of any latent factor that the Contractor was not aware of when the Price was quoted then the

Contractor may re-quote the Price to the Customer and such re-quoted Price will be open for acceptance by the Customer. Should the re-quoted Price not be accepted by the Customer the Contractor can cease the Services it is providing to the Customer and the Customer will only be liable for the proportion of the Services carried out until the Contractor's cessation of the Services.

3.3 Should any adjustments be agreed to the details of work quoted such as requested variations to the work, change in scope of the work or additional work then the Contractor may requote the Price to the Customer and such requoted Price will be open for acceptance by the Customer. Should the requoted Price not be accepted by the Customer then the Contractor has no obligation to carry out such adjustments.

3.4 Unless otherwise stated, the Price is on the basis that:-

3.4.1 Ground conditions are satisfactory for the Contractor to supply the Goods and/or Services.

3.4.2 The site is bare and cleared of all rubbish and debris.

3.5 Notwithstanding any Price given by the Contractor to the Customer, the Customer acknowledges that the Price is based on the best Price available at the date of the quotation or invoice given by the Contractor, and the Contractor reserves the right to pass on to the Customer any increase in the cost incurred by it between the date of first issuing a quote or invoice and the date on which the Goods or Services are supplied.

4 Payment

4.1 Unless otherwise agreed in writing, a deposit of 50% of the Price is required prior to the commencement of the supply of Goods and Services. The balance is required on the day the Goods and Services are completed.

4.2 The Contractor will specify the date payment must be made following issue of invoices. Time for payment will be of the essence. All payments must be made without any set offs or deductions whatsoever.

4.3 All Prices quoted or invoices are exclusive of GST and GST will be added to the Prices quoted or invoices.

4.4 Should payment in full not be made on the due date, then without prejudice to any other remedies available to the Contractor it may:

4.4.1 cancel or withhold the supply of further Goods or Services;

4.4.2 charge and recover interest charged on a daily basis at a rate of 2% during the period of default up until the date of payment; and

4.4.3 the Customer shall be responsible for all costs (including costs on a solicitor/client basis) incurred by the Contractor in recovering all outstanding amounts.

4.4.4 if the total amount, (including interest), due and outstanding to the Contractor by the Customer, is not paid by the due date, then any time after such date the Contractor may use a debt collection agent, and the agent's fee, and

outstanding account, plus legal fees (on a solicitor client basis) and other costs arising from such collection, will be payable by the Customer in addition to the amount of the overdue and outstanding account.

5 Risk

5.1 The risk of any loss or damage to or deterioration of goods shall pass to the Customer when the Customer takes possession of those goods.

6 Consumer Guarantees Act 1993 (CGA)

6.1 If the CGA applies, the terms and conditions shall be read subject to the Customer's rights under the CGA, provided that where the Customer is acquiring goods for business purposes, the CGA shall not apply. Where the Customer on supplies goods purchased from the Contractor to persons for business purposes, the Customer shall in contracting with those persons provide that the CGA shall not apply to the extent permitted by law. The Customer indemnifies the Contractor in respect of any failure to comply with this provision.

7 Personal Property Securities Act 1999 (PPSA)

7.1 To secure payment of all amounts owing by the Customer to the Contractor from time to time, the Customer as debtor grants a security interest in all goods previously supplied by the Contractor to the Customer and all after acquired goods supplied by the Contractor to the Customer. The Customer also grants a General Security Interest in all the Customer's present and after acquired property as collateral securing payment of all outstanding indebtedness owing by the Customer to the Contractor.

7.2 The Customer acknowledges and agrees that the security interests given to the Contractor includes a security interest in all proceeds of collateral.

7.3 The Customer agrees to waive its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest and that the Customer contracts out of sections 114(1)(a), 117(1)(c), 133, and 134 of the PPSA. The rights of a debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA do not apply to the security interest given by the Customer to the Contractor.

7.4 The Customer agrees to provide any information or sign any document required under the PPSA and the regulations under the PPSA to enable the Contractor to register a financing statement or a financing change statement.

8 Property in goods

8.1 Property in goods sold by the Contractor will not pass until the Customer has made payment in full of the purchase price for those goods to the Contractor. Until such payment is made the Customer will hold the goods as bailee for the Contractor and the Contractor shall have the right to enter the premises occupied by the Customer and take possession of any of those goods at any time after payment is due.

8.2 If the goods or any of them are resold before payment is made, the Customer shall hold the

sale proceeds for and on account of the Contractor. The proceeds of any such sale will reduce the debt to the Contractor and the Contractor may take such legal remedies as are available to it to recover any balance outstanding. The Customer agrees that any collection costs incurred by the Contractor in collection of all or any part of any overdue debt on this account will be payable by it.

9 Privacy Act

9.1 The Customer expressly authorises the Contractor to make any enquiries it considers necessary for confirmation of any information set out on this application. The Customer understands that it has rights under the Privacy Act 1993 to access and correct any information held by the Contractor about the Customer.

10 Authority

10.1 The persons signing this application confirm(s) having the authority to make and sign this application on behalf of the customer.

10.2 Subject to the Contractor's consent, variations to the Services may be agreed with the person signing this application form by way of telephone discussion.

11 Site Access

11.1 The Contractor shall be entitled to have reasonable access to the site at all reasonable hours to carry out the supply of Goods and Services. The Customer shall not unreasonably interfere with the progress of the supply of Goods and Services.

11.2 The Customer is responsible for identifying, disconnecting, removing and reinstating all electrical, water and sewerage services, and any other services, as required for the supply of Goods and Services to be completed. This will be done at the Customer's sole cost.

12 Terms of Contract

12.1 Any Goods or Services supplied by the Contractor shall be subject to these terms unless agreed otherwise in writing. The Customer's acceptance of Goods or Services from the Contractor is deemed to be an acceptance of these terms.

13 Warranty

13.1 The Contractor warrants that any defect in the workmanship of the Contractor that becomes apparent and reported to the Contractor within 1 year of the date of delivery of the Goods and Services then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship subject to the following:

13.2 The above warranty does not apply where any defect or damage found in the workmanship may be caused or partly caused or arise through:-

13.2.1 Failure of the Customer to comply with any instructions provided by the Contractor;

13.2.2 Fair wear and tear;

13.2.3 If any alterations or repairs are carried out without the Contractor's consent.

13.2.4 sub surface failure or damage to the surface of the asphalt drive caused by the

actions of any persons (eg utilising power steering in a stationary vehicle which will in all circumstances cause damage).

13.3 The Customer acknowledges that in respect of Goods and Services involving concrete, the concrete may crack, concrete slabs may differ in appearance from one another, concrete slabs may have uneven shading, the concrete supplied may not replicate samples given to the Customer. None of these issues shall give rise to a claim by the Customer against the Contractor or be considered a breach of the Contractor's warranty.

13.4 The Contractor is not liable for damage to any utility services (such as but not limited to power, telephone, sewage and water) unless the location of such utility services is accurately disclosed to the Contractor prior to the Contractor commencing work.

13.5 The Contractor is not liable for any damage that is beyond the Contractor's control, for example but not limited to further damage to the drains or pipelines caused by work being carried out on the other parts of the drain or pipeline network or because of existing or new damage to other parts of the drain and pipeline network.

13.6 The Contractor is not liable for any damage caused by earth movement whether caused by earthquake, machinery (other than the Contractor's machinery) or any other means whatsoever.

14 Underground Locations

14.1 Prior to the Contractor commencing the supply of Goods or Services to the Customer, the Customer must advise the Contractor of the precise location of all underground services on the site. These underground services 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 located underground.

14.2 Whilst the Contractor will take care to avoid damage to any underground services, the Customer indemnifies the Contractor and its directors, agents, employees, and subcontractors in respect of all and any liability, claims, loss, damage, costs and fines arising as a result of damage to underground services not precisely located and advised by the Customer.

15 Insurance

15.1 The Contractor shall have public liability insurance of at least \$2,000,000.00.

16 Compliance

16.1 The Customer and Contractor must comply with all statutes, regulations, bylaws or conditions of any applicable consents.

16.2 The Customer must ensure that the work site complies with any occupational health and safety laws and ensure that nothing is left on the site that may be a hazard to the Contractor or any other person who may enter onto the work site in particular the Customer must ensure that no children or pets can access the work site.

16.3 The Customer will ensure that the Contractor has access to the work site at all reasonable times to carry out the services and must

accurately disclose the location of any utility services such as underground power, telephone lines, sewage and water pipes.

17 Completion

17.1 Upon completion of the work the Contractor may require the Customer to sign a completion acceptance form whereby the Customer acknowledges that the goods or services supplied pursuant to these terms of trade have been supplied or completed satisfactorily and in accordance with the details provided for in any quote or invoice given to the Customer. The Customer acknowledges that signing such form constitutes acceptance that the Contractor has completed the work the Contractor agreed to provide and the Price quoted is payable in full.

18 Guarantee

18.1 Where the Customer is a company, in consideration of the Contractor agreeing to provide the Customer with credit (at the request of the guarantor) either by the supply of goods on credit or the provision services or in any other form whatsoever, the director(s) of the Customer agree(s) to jointly and severally personally guarantee due payment of all monies now or at any time owing to the Contractor and jointly and severally undertake to indemnify the Contractor against all costs and expenses including legal costs on a solicitor client basis, incurred or suffered in connection with or in relation the supply of credit.

19 Force Majeure

19.1 If the Contractor is prevented from fulfilling the Services as a result of a Force Majeure event beyond the Contractor's control, the Contractor may either delay completion of the Services or terminate the provision of the Services by giving written notice to the customer. An act of Force Majeure which will include by way of example but not limited to flood, earthquake, civil disobedience, war, ration allocation or embargoes, terrorism, major strikes or labour shortages, acts of God or Government or local or regional authorities or any branch or agency of them.

20 Disputes

20.1 In the event of any dispute or difference arising between the parties in respect of any matter relating to the Goods or Services the Contractor and Customer shall in good faith in the first instances use their best endeavours to resolve the matters themselves.

20.2 In the event that the Contractor and Customer are not able to resolve the matter themselves then all matters shall be referred to a mediator and is to be mediated in accordance with the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution). The chair of LEADR will select the mediator and determine the mediator's remuneration.