1. DEFINITIONS

1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
1.2. 'Contractor', 'we', or 'us' means Curin Contractors Limited trading as Curin Contractors Ltd (our successors and assigns) or any person acting with the authority of Curin Contractors Limited.
1.3. 'Client,' 'you', or 'your' means the Client purchasing Materials or Services from us or any person acting on your behalf (including authorised agents).
1.4. 'Services' means all Services provided to you, including any provision of the Materials as specified in any documentation or otherwise provided under this Agreement (and where the context permits, the terms 'Materials' or 'Services' shall be interchangeable for the other).
1.5. 'Materials' means all Materials required to complete the Services.
1.6. 'Worksite' means the address or location where we will provide the Services you nominate.
1.7. 'Price' means the Price of the Services (in accordance with clause 6).
1.8. 'Equipment' means all Equipment (including any accessories) supplied on hire to you (and where the context permits, shall include any incidental supply of Services). You agree that we own the Equipment, and any charges are for hire and not an outright purchase.
1.9. 'Agreement' means these terms and conditions, as may be amended from time to time (including our privacy policy and any orders, purchases, or schedules, as applicable).
1.10. 'Amounts Owing' means any amount you owe to us from time to time, including the Price, any of your liability under this Agreement, any interest payable, and any enforcement expenses we incur in seeking payment of any Amounts Owing.
1.11. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
1.12. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Materials or Services (as applicable), and intellectual property rights, but excludes information which is:
   (a) in the public domain, other than as a result of a breach of this Agreement;
   (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
   (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information that would itself be Confidential Information.
1.13. 'Event of Default' means a party's failure to comply with this Agreement (including your obligations in clause 6).
1.14. 'Insolvency Event' means an event of insolvency or bankruptcy, including:
   (a) the appointment of an insolvency administrator, manager, receiver or liquidator;
   (b) any action related to winding up or making a material arrangement in relation to creditors;
   (c) applying for any type of protection against creditors;
   (d) being unable to pay your debts as they fall due; or
   (e) taking or suffering any similar or analogous action in any jurisdiction due to debt.
1.15. 'Personnel' means directors, officers, employees, agents and contractors.
1.16. 'CCLA' means the Contract and Commercial Law Act 2017.
1.17. 'PPSA' means the Personal Property Securities Act 1999.
1.18. 'CCA' means the Construction Contracts Act 2002.
1.19. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
1.20. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
1.21. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

2.1. In this Agreement, unless the context otherwise requires:
   (a) headings are for convenience only and do not affect interpretation;
   (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
   (c) a reference to 'in writing' includes by email;
   (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
   (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
   (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

3.1. All orders are subject to our acceptance. We may (at our sole discretion) accept any order in whole or part by issuing an invoice for the applicable Services, delivering the Materials or Services or otherwise confirming the order in writing.
3.2. You acknowledge and accept that:
   (a) the supply of Materials on credit may not take effect until you have completed a credit application with us and it has been approved with a credit limit established for the account;
   (b) if the supply of Materials requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
   (c) this Agreement may only be amended with our written consent and shall supersede any other document or agreement between the parties; and
   (d) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation.
3.3. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Materials or Services.
3.4. Your acceptance of this Agreement shall continue to all future orders, purchases, or schedules (as applicable). This Agreement will be or is deemed to be incorporated into and form part of each order, purchase, or schedule as if it were set out or implied therein in full.
3.5. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided they have complied with sections in Part 4, subpart 3, and all other relevant sections in Part 4 of the CCLA.
3.6. Once you have accepted the quote, you are not entitled to have any part of the Services carried out by any third party (unless we agree in writing).
3.7. Any instructions we receive from you (either oral or in writing) for the provision of the Materials or Services shall be binding under this Agreement.

4. AUTHORISED AGENTS

4.1. We are not obligated to enquire about the authority of any person placing an order on your behalf.
4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name or any other changes to your details (including changes to the ownership of the company, address, email, contact phone or business structure).
5.2. You acknowledge and accept that if you fail to comply with clause 5.1, you will breach this Agreement and shall be liable for any expense or loss of profit we suffer (including any Related Company).

6. PRICE AND PAYMENT

6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
6.2. Unless we agree otherwise in writing, the Price shall be:
   (a) indicated in the invoices provided to you in respect of the Services;
   (b) our estimated Price (subject to clause 8), with the final Price being ascertained upon completion of the Services; or
   (c) our quoted Price, which will be binding, subject to your acceptance of our quotation in writing within thirty (30) days and clause 8.
6.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Materials or Services will be at our standard rate according to our current Price list or at a rate notified to you.
6.4. You agree to pay the Price by the due date we determine and advise to you (at our sole discretion), which may be:
   (a) on delivery of the Materials or completion of the Services;
   (b) by way of progress payments in accordance with our agreed progress payment schedule, and such progress payment claims may include the value of any authorised variations and the value of any Materials that have been delivered to the Worksite (whether installed or not);
   (c) due twenty (20) days following the end of the month in which a statement or invoice is sent to you; or
   (d) seven (7) days following the date of any invoice we give you if there is no notice to the contrary.
6.5. We may submit payment claims under the CCA. A payment schedule must be provided to us within twenty (20) working days from receipt of our payment claim (and if you wish to dispute the amount of any payment claim, you must do so in accordance with Part 2, subpart 3 of the CCA).
6.6. At our sole discretion, we may allocate any payment from you towards any invoice that we determine and may do so at the time of receipt or any time afterwards. We may re-allocate any previously received and allocated payments if an Event of Default occurs. In the absence of any payment allocation, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests (as defined in the PPSA) in the Materials or Services.
6.7. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing.
6.8. Where we pay any subcontractor's account on your behalf, you agree to reimburse us for the payment of the subcontractor's account within seven (7) days (unless otherwise agreed in writing).
6.9. We reserve the right to alter any Price lists at any time. Any alterations to any Price list will be effective from the date we specify and apply to all orders or purchases we accept on or after that date.
6.10. Payment may be made by online banking or any other method we agree to in writing.
6.11. Ownership of the Materials or Services remains with us until full payment has been cleared and received (in accordance with clause 18.1).
6.12. If you make a payment and the transaction is subsequently reversed, you agree to be liable for the transaction and any further costs we incur.

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6.13. You are not entitled to withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services are disputed, you agree that you will:
(a) perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
(b) provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.

6.14. If an Insolvency Event occurs, all Amounts Owing will immediately become due and payable.

7. CONSTRUCTION CONTRACTS (RETENTION MONEY) AMENDMENT ACT 2023

7.1. At the agreement of both parties, payment of the Price may be subject to a retainable amount, being a set amount or equal to a percentage of the Price, that becomes retention money under Part 1, section 18B(2) or section (6)(a) of the Construction Contracts (Retention Money) Amendment Act 2023 (CCRMA). Any retention money shall be trust property, held on trust for the agreed period following completion of the Services, during which all defects are to be remedied.

7.2. You acknowledge and agree to:
(a) keep and use all retention money that applies to this Agreement in accordance with Part 1, section 18D of the CCRMA;
(b) maintain accounting records of all retention money, including maintaining separate ledger records for each party and in relation to each construction contract for which money is held on trust;
(c) report on retention money when requested and at least every three (3) months until the retention money trust ends; and
(d) compensate us if any unallocated withdrawals or deposits occur and lead to a loss of any retention money held for us (if Part 1, section 18EA of the CCRMA applies).

8. VARIATIONS

8.1. The Price will be adjusted to reflect any extra cost or expense we incur due to any instruction received from you (or your authorised agent) or any action or inaction on your part.

8.2. We reserve the right to change the quoted Price if:
(a) there is any change to the Services, including: (i) any information you provide is inaccurate; (ii) there is an increase or decrease in the quantity of the Services; (iii) you request any change to plans or specifications; (iv) there is a change in the character or quality of any Materials or the Services; or (v) there is any changes to the timing or sequencing of the Services;
(b) additional Services are required due to: (i) the discovery of hidden or unidentifiable difficulties which are only discovered on the commencement of the Services; (ii) poor weather conditions affecting the Services; (iii) limitations to accessing the Worksite (including if heavy machinery or trucks are unable to access the Worksite); (iv) barriers obstructing access to an area of the Worksite (including hard rock or metal below the surface); (v) incorrect measurements, plans or specifications you provide; (vi) health and safety considerations; (vii) any workmanship by a third party being of poor quality or incomplete which requires remedial Services; (viii) the lack of amenities at the Worksite that are necessary for the provision of the Services; or (ix) changes in government policy or legislative requirements; or
(c) the cost of labour or Materials increases due to changes beyond our control, including: (i) economic factors such as inflation or supply shortages; (ii) any taxes imposed by any Regulator; (iii) overseas transactions that may increase due to variations in foreign currency rates of exchange; or (iv) or international freight and insurance charges).

8.3. We will provide written notice where a variation must be completed, and you may not arbitrarily withhold agreement to undertake that variation.

8.4. In addition to any Price adjustment for variations, we shall be entitled to charge for our time and expenses in assessing and pricing any variation (whether or not the variation goes ahead). You shall pay a reasonable additional fee based on our regular hourly rate and expenses (including where you request us to take any steps in preparation for a variation that, for any reason, does not proceed).

8.5. If a territorial authority requires a variation (including as a condition of granting or retaining a building consent or for any part of the Services to comply with the building code), both parties must communicate regarding the variation requirement. You agree to advise us whether you wish the variation to be carried out or whether an alternative arrangement can be made to avoid the need for the variation.

8.6. You agree not to negotiate any variations directly with our subcontractors or merchants without our written consent.

9. PROVISION OF SERVICES

9.1. We will deliver the Materials or Services to the delivery location that we each agree to in writing. If the delivery location is at your premises, you will provide us (and our Personnel) with suitable access to the premises and any amenities we reasonably require to deliver the Materials or Services.

9.2. We shall not be liable for any delay caused by:
(a) variations or additional work;
(b) any other delays for which you are responsible (including delays caused by third parties you have engaged);
(c) a failure or delay on your part in complying with your obligations under this Agreement, including (i) paying the deposit; (ii) providing proof of finance or insurance; (iii) ensuring all necessary services are available at the Worksite; or (iv) providing us with access to the Worksite for the provision of the Services;
(d) delays on the part of a consenting authority or other Regulator;
(e) weather conditions affecting the completion of the Services;
(f) suspensions of the Services by either party;
(g) unforeseen health and safety requirements;
(h) if subcontractors or Materials are unavailable;
(i) any matter covered in clause 32.8 of this Agreement;
(j) dispute resolution procedures invoked by either party in circumstances that, in our reasonable opinion, make it impracticable to proceed as otherwise planned or legal proceedings relating to the Services, commenced or threatened by a third party in circumstances that make it impractical for us to proceed; or
(k) any other matter outside our reasonable control.

9.3. Where we deliver the Materials or Services, you will:
(a) ensure we have all-weather access to the Worksite to enable us to deliver the Materials; and
(b) locate, mark and advise us of all pipes, cabling and other utilities on, near, or adjacent to the delivery point and any actual or possible hazards on the land or premises where the Materials are to be delivered.

9.4. You acknowledge and agree that:
(a) you must determine and mark the final location of any excavation site (and it is your sole responsibility unless we have agreed otherwise under the scope of the Services); and
(b) you shall be responsible for: (i) the maintenance, cleaning and repair of entry and exit points from the Worksite on any third-party property or public road. We will accept no liability for any maintenance, cleaning or repair of entry and exit points from the Worksite, including any local or government charges or fines relating to mud or debris on the road; and (ii) any fees, penalties or infringements (whether imposed by any Regulator or court) we incur as a result of your failure to receive the delivery of the Materials.

9.5. The final decision on entering any Worksite will be at our sole discretion, and our failure to deliver the Materials will not be deemed a breach of this Agreement if access to the Worksite is not suitable to complete the delivery.

9.6. You acknowledge and agree to:
(a) indemnify us against all costs we incur in returning our machinery or vehicles to the road if they become stuck or otherwise immovable due to ground conditions (including all additional time at our regular hourly rate and any other costs we incur); and
(b) where applicable, ensure that prior to the commencement of the Services, all gas and electricity are cancelled and disconnected (from the main supply at the street), and a safety fence is erected around the perimeter of the Worksite to ensure public safety.

9.7. You accept that the supply of Materials for accepted orders may be subject to availability. If, for any reason, Materials are not or cease to be available, we reserve the right to substitute comparable Materials (or components of the Materials) and vary the Price (in accordance with clause 8). In all such cases, we will notify you before any such substitution and reserve the right to place your order on hold until both parties agree to such changes.

9.8. Where a delay has occurred, we shall be entitled to an extension of time to complete the Services and amend the expected completion date. We shall notify you of the amended scheduled completion date within a reasonable time after the delay becomes apparent.

9.9. If we cannot supply the Services as agreed solely due to your actions or inaction, we shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date (including storage of the Materials, if applicable).

9.10. Any time we specify for delivery of the Materials is an estimate only. We will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery, nor can you cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery (or any delay in delivery due to any event beyond our control).

9.11. We may deliver the Materials in separate instalments, which will be invoiced and paid as individual transactions.

10. ERRORS AND OMISSIONS

10.1. You agree that we have no liability regarding any errors or omissions:
(a) resulting from any unintentional mistake made in the formation or administration of this Agreement; or
(b) contained in any documentation supplied to you regarding the Services.

10.2. If such an error or omission occurs that is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

10.3. You agree to notify us as soon as reasonably possible if you become aware of any error in the documentation provided regarding the Services.

11. DEFECTS

11.1. You shall inspect all Materials or Services immediately on delivery and notify us of any alleged defect within seven (7) days from the delivery date. If you do not notify us within this timeframe, the Materials or Services shall be presumed free of defects or other issues (subject to clause 15.1).

11.2. You shall allow us to inspect the Materials or Services to rectify any defect within fourteen (14) days from the delivery date if you believe the Materials or Services are defective and shall not engage any third party to rectify any defect before we inspect the Services. If you engage a third party to rectify any defect before allowing us to inspect the Services, then we are:
(a) entitled to cancel this Agreement, and all Amounts Owing shall become due;
(b) not be obliged to provide any information or documentation or take any other action necessary to enable a code compliance certificate to be issued in respect of the Services; and
(c) immediately discharged from any further obligation or liability regarding the Services.

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11.3. Any period during which the Services has been suspended (under clause 28) as a consequence of your default shall not be counted when calculating a reasonable time for rectification of any defect, and any suspension shall not be construed as a permanent abandonment of the Services.
11.4. A defect does not include any fair wear and tear or damage resulting from your failure to follow our reasonable instructions.

12. RETURNS AND WARRANTIES

12.1. Return of the Materials will not be accepted (unless otherwise agreed in writing).
12.2. Subject to the conditions of the warranty set out in clause 12.3, we warrant that if any issue with our workmanship becomes apparent and is reported to us within the period provided in the specific contract conditions or if no timeframe is provided, then three (3) months from the completion of the Services (time being of the essence to report such issues), we will either replace or remedy the defect (at our sole discretion).
12.3. The conditions applicable to the warranty given under clause 12.2 are:
(a) we shall not be liable to compensate you for any delay in remedying the defect or in properly assessing your claim regarding the defective Services; and
(b) the warranty set out in clause 12.2 shall cease, and we shall in no circumstances be liable if the Services are repaired or altered by any third party without our written consent.
12.4. For Materials we do not manufacture, the warranty shall be the current warranty provided by the manufacturer, and we shall not be bound by any condition, representation, or warranty other than that which the manufacturer offers.

13. PRIVACY ACT 2020

13.1. You authorise us (and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:
(a) exercising our rights or performing our obligations under this Agreement;
(b) using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
(c) monitoring your credit file with credit reporting agencies;
(d) registering any Security Interest under this Agreement;
(e) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
(f) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
13.2. You (if you are an individual) have the right under information privacy principles 6 and 7 and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information we hold. If you provide any personal information about a third party to us (including your Personnel), you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
13.3. If the Services are expected to involve sharing any data sets or other personal information, we will enter into a separate data protection agreement with you.
13.4. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

14. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

14.1. Each party must keep confidential all Confidential Information, however, nothing in clause 14 prevents a party from disclosing Confidential Information:
(a) in the circumstances provided for in this Agreement;
(b) if the disclosure is required by law or Regulator (but only to the extent necessary); or
(c) if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.
14.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
14.3. You acknowledge and agree that we own:
(a) all right, title and interest in the Materials or Services at all times (including all intellectual property rights); and
(b) any new Intellectual Property created as a result of or in connection with the provision of the Materials or Services.
14.4. If, notwithstanding clause 14.3, any Intellectual Property rights in any of the Materials or Services vests in you, you assign those Intellectual Property rights to us with effect from creation and agree to do all things we reasonably require to give effect to such assignment.
14.5. You agree that we may use at no expense any designs, drawings, plans, documents or photographs we create to market our Services or enter any competition. We will exclude your personal information, and you will not be able to be uniquely identified from the content we may use.
14.6. You warrant that our use of any designs, instructions, plans, specifications, or other technical information you provide will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor-client basis) that we may incur or suffer in the event of any such infringement.

15. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

15.1. Subject to clause 15.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under section 2 of the Consumer Guarantees Act 1993 (CGA)) under the CGA.
15.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Materials or Services in trade:
(a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
(b) it is fair and reasonable for the parties to be bound by clause 15.2.
15.3. If you are acquiring the Materials or Services to resupply the Materials or Services in trade, you undertake that you will:
(a) contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and
(b) procure that your clients and each person in the distribution chain thereafter contract out of the CGA to the maximum extent permitted by law in their contracts with clients.
15.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Materials or Services in trade:
(a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
(b) it is fair and reasonable for the parties to be bound by clause 15.4.
15.5. You agree to indemnify us against any expenses or losses we incur due to your breach of clause 15.

16. CANCELLATION

16.1. Either party may cancel the Services provided under this Agreement if:
(a) any provision of this Agreement authorises cancellation in the circumstances;
(b) either party have a right to cancel this Agreement under Part 2, subpart 3 of the CCLA (or any other statute); or
(c) either party have permanently abandoned the Services before completion or has become incapable of complying with the obligations under this Agreement.
16.2. If either party cancels this Agreement, the cancellation shall take effect on the service of a notice on the other party (in accordance with clause 32.7) advising of the cancellation and the reason for the cancellation.
16.3. If you cancel this Agreement, you agree that we are entitled to:
(a) charge for any reasonable loss of profit; and
(b) forfeit your deposit or any amount paid in advance and apply it to any Amounts Owing without prejudice to our other rights and remedies; and
(c) be paid any retention money and have any bond held released immediately.
16.4. If either party exercises the right to cancel this Agreement:
(a) you agree to pay for the Materials delivered and the Services performed up to the date of cancellation. If the Amounts Owing for any Materials or Services is not apparent, it shall be calculated as if the relevant Materials and Services were provided as a variation (in accordance with clause 8); and
(b) we shall provide possession of the Services to you (subject to all Amounts Owing being paid in full) and remove from the Worksite all Materials, tools, plant, Equipment, and vehicles belonging to us (and our subcontractors).
16.5. We shall be entitled to cancel all or part of any order which remains unperformed, and all Amounts Owing shall become immediately due if:
(a) any Amounts Owing become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
(b) an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors, or a liquidator or similar person is appointed.
16.6. If we commit any of the following acts of default and we have not remedied the default within twenty (20) Business Days of receiving written notice of the default, you may cancel this Agreement, including if we:
(a) become insolvent or bankrupt, convene a meeting with our creditors or a liquidator or similar person is appointed in respect of our assets; or
(b) persistently or wilfully neglect our obligations under this Agreement.
16.7. Where you cancel the Agreement, the warranty provided may be withdrawn or rendered void (including the warranty in clause 12). To avoid rendering the warranty void, you must act in good faith and consult with us regarding the options for a resolution (including obtaining our prior written consent to the cancellation).
16.8. Orders to your specifications or non-stock-list items cannot be cancelled once production has commenced.
16.9. All provisions of this Agreement intended to continue in force beyond cancellation shall continue to bind the parties (in accordance with clause 32.12).
16.10. Subject to clause 16.9, on cancellation, each party shall be immediately discharged from any further obligation or liability regarding the Services and this Agreement (without prejudice to any right or remedy arising from either party's prior breach or unlawful act occurring before the cancellation).

17. EVENT OF DEFAULT

17.1. We may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount from the due date of payment until the date the outstanding amount is paid (and any interest shall compound monthly).
17.2. If an Event of Default occurs, you agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including any administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis).
17.3. Should you fail to pay any account, we may withhold the release of any producer statement, certification, or documentation relating to the Services provided until all Amounts Owing are paid in full.

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17.4. You acknowledge and agree that if you are in default, we may, at our sole discretion:
(a) appoint a receiver in respect of your assets to take any action necessary to fulfil your obligations (including paying all Amounts Owing); and
(b) charge you any associated costs to complete this process.

18. RETENTION OF TITLE

18.1. Ownership (including all right, title and interest) of the Materials and Services remains with us until:
(a) we have received all Amounts Owing; and
(b) you have performed all of your obligations under this Agreement.
18.2. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Materials may be stored to remove any Materials. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses you or any third party incur, and you indemnify us against any liability we may have to any third party (including full legal costs on a solicitor-client basis), as a result of us exercising our rights under clause 18.2 (except where damages, costs or losses are due to our negligence or fraud).
18.3. If you resell or use any Materials before ownership of the Materials has passed to you (including combining or processing the Materials), the proceeds of such sale or use will be received and held (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).
18.4. It is further agreed that:
(a) where possible, the Materials shall be kept separate and identifiable until we have received full payment and you have fulfilled all of your obligations under this Agreement; and
(b) until ownership of the Materials passes to you, we may give notice in writing to return the Materials (or any accessories or components), and your rights to obtain ownership or any other interest in the Materials shall cease.
18.5. If any Materials are damaged where full payment has not been received, you agree that we are entitled to:
(a) receive all insurance proceeds paid for the Materials; and
(b) deal directly with the insurance company to receive all insurance proceeds paid for the Materials.
18.6. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Materials or Services has not passed to you.

19. SECURITY AND LIEN

19.1. Subject to us providing any Materials or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien you own either now or in the future and you grant a security interest in all of your present and after-acquired property to secure the performance of all obligations under this Agreement (including full payment of all Amounts Owing).
19.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 19.1 of this Agreement (including signing any document on your behalf).
19.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 19 to secure the performance of your obligations under this Agreement.
19.4. It is fair and reasonable for the parties to be bound by clause 19.

20. PERSONAL PROPERTY SECURITIES ACT 1999

20.1. You acknowledge and agree that:
(a) this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Materials and Services or the proceeds of such Materials and Services; and
(b) the Security Interest granted to us secures the payment of all Amounts Owing.
20.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a perfected Security Interest in the Materials and Services, or a Security Interest in the proceeds of the Materials and Services (a Security Interest taken in all collateral and any proceeds).
20.3. To the extent permitted by law, we each contract out of:
(a) sections 114(1)(a), 133 and 134 of the PPSA; and
(b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
20.4. You waive your right to receive a verification statement under Part 10, section 148 of the PPSA regarding any financing statement relating to a Security Interest.
20.5. You acknowledge and agree that a Security Interest is perfected and attached to the Materials (the collateral) in accordance with Part 3 of the PPSA, and the Security Interest shall extend to the proceeds of the Materials as specified in Part 4, section 45(1) of the PPSA.
20.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
20.7. You must provide us with information and any associated documentation we request regarding your financial status from time to time.
20.8. If we consider your financial status unsatisfactory at any time, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Materials or Services until you have provided such Security Interests.
20.9. You unconditionally ratify any actions taken under clause 20.

21. WORKSITE ACCESS

21.1. You acknowledge and agree that it is your responsibility to ensure:
(a) we have clear and free access to the Worksite to deliver the Materials or undertake the Services, and we shall not be liable for any loss or damage to the Worksite (including damage to pathways, driveways, concrete, and paved or grassed areas) unless due to our negligence; and
(b) access is suitable to accept the weight of laden trucks or other earthmoving Equipment as necessary.
21.2. You (and your agents) shall be entitled to have reasonable access to inspect the Services, subject to the following:
(a) you shall provide us with at least twenty-four (24) hours notice before exercising your access rights; and
(b) you agree to comply with all health and safety legislation requirements, including all reasonable and relevant instructions we provide, such as wearing protective clothing when on the Worksite (in accordance with clause 25).

22. CLIENT'S RESPONSIBILITIES

22.1. You acknowledge and agree that it is your responsibility to:
(a) provide us with adequate access to amenities, including available water, electricity, toilet and washing facilities (unless otherwise agreed in writing); and
(b) ensure any animals or children at or near the Worksite are safe.
22.2. If you are to supply any materials or services in connection with this Agreement (whether personally or by arrangement with a supplier or contractor), then our prior written consent is required, and you must ensure that the materials or services:
(a) meet the same standards as we are required to attain regarding the Materials and Services we are responsible for supplying under this Agreement; and
(b) are delivered at such a time and in such a manner that we are not impeded from complying with our obligations under this Agreement.
22.3. You must proceed with the services you are supplying expeditiously and without delay and not unreasonably impede us from performing our obligations. You agree to promptly and comprehensively provide any information and make any decision we may reasonably request regarding any Services you are supplying.
22.4. We may, at our discretion, notify you that we require you to store Materials or tools required for the completion of the Services at the Worksite, in which case you agree to provide us with a safe area for storage and shall take all reasonable efforts to protect any Materials or tools from theft or damage. You agree that the cost of repair or replacement of any Materials or tools that are stolen or damaged while stored at the Worksite shall be your responsibility.

23. INSURANCE AND RISK

23.1. You acknowledge and agree that:
(a) where we supply Materials only, all risks for the Materials shall immediately pass to you on delivery, and you must insure the Materials on or before delivery. The delivery of the Materials shall be deemed to have taken place immediately at the time that either: (i) you (or your nominated carrier) take possession of the Materials at our address; or (ii) we (or our nominated carrier) deliver the Materials to your nominated delivery address (even if you are not present at the address); or
(b) if we are providing earthmoving Services, we shall maintain an insurance policy until completion, at which point all risks for the Services shall immediately pass to you.
23.2. We shall maintain public liability insurance coverage of at least one million dollars ($1,000,000.00). It is your responsibility to ensure that you are also insured.
23.3. You acknowledge and agree that if:
(a) we discover any fossils, artefacts, Maori iwi burial grounds or other remains of geological or archaeological interest while performing the Services, we reserve the right to halt the Services, remove our Equipment from the Worksite, and immediately notify you. You agree that all additional costs that we may incur as a result, including if we are unable to remove our Equipment from the Worksite, will be your responsibility and shall be treated as a variation (in accordance with clause 8).
(b) undisclosed waste or hazardous materials are discovered, we reserve the right to halt all Services and immediately notify you. It shall be your responsibility to arrange the removal of all such materials. If we agree to remove such materials for you, this shall be treated as a variation (in accordance with clause 8) and will be an addition to the Price.
23.4. We accept no responsibility for:
(a) damage or defects in the Materials caused by movement or interference by any third party; or
(b) replanting, resealing or landscaping work required to restore any surface or area where the Services have been carried out to its original condition.
23.5. If we require access to adjoining or adjacent property or land that you do not own to access the Worksite to undertake the Services, it is your responsibility to gain permission from the land owner to use the aforementioned property throughout the process of delivering the Services. If the land owner denies access or use of the land or property, you shall be liable for all costs we incur in gaining permission to access and use the property through any legal process that may be necessary.
23.6. During the installation process, we will ensure that all Materials are installed in a manner that is fully compliant with industry standards. If, for any reason, you specifically request the Materials to be installed in any way that goes against our recommendations or falls outside of industry standards, you must make a request

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detailing that requirement in writing to us, and we offer no warranty if we are required to follow your instructions.

23.7. Both parties acknowledge and agree to comply with the NZS 3910:2023 Conditions of Contract for Building and Civil Engineering Construction Standards concerning the Services supplied. All pipe laying and cabling work will comply with New Zealand regulations and standards.

23.8. You agree to cooperate with our requests and directives regarding the timing and coordination of Services and discuss any issues directly with us, not our subcontractors.

23.9. If you or any third party you engage does not comply with us, we may require the non-compliant party to either temporarily leave or stay off the Worksite as we direct, or we may suspend the Services.

23.10. You accept that we are only responsible for the Materials or Services we provide or replace. We do not accept any responsibility for previous Services carried out by any third party or for any loss or damage to the Materials or Services caused by any other third party after the completion of the Services (including any damage caused by foot traffic or animals).

23.11. Should you request that we leave Materials outside our premises for collection or deliver them to an unattended location, you agree that those Materials shall be left at your sole risk.

24. NOTIFICATION OF SERVICES

24.1. You must precisely locate all unseen or underground services at the Worksite and mark the same prior to us commencing any of the Services (including electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be present on the Worksite). You agree that we are in no way liable for any repair costs or fines incurred due to damage to underground services that you do not precisely locate and mark prior to the commencement of the Services.

24.2. We accept no liability for unforeseen or unmarked underground services at the Worksite. If underground services are damaged despite us taking all reasonable steps to identify the underground services present, all liability and repair costs shall be your responsibility (including the obligation to seek damages from the party who installed and failed to mark the correct location of the services). Any additional Services required due to damage to underground services will be treated as a variation (in accordance with clause 8) unless due to our negligence.

24.3. If you request us to engage a service locator or if we require this based on industry experience, we will (at your expense) seek advice on underground services from a suitably competent and certified underground service locator, which will be based on best practices, plans, drawings, and available information. You agree to indemnify us regarding all liability and repair costs resulting from damage to underground services not precisely located and marked by the certified service locator.

25. HEALTH AND SAFETY AT WORK ACT 2015

25.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act and all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.

25.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.

25.3. Each party must consult, cooperate and coordinate activities with all other persons with a health and safety duty in relation to the same matter in providing the Materials or Services (including in connection with the delivery of the Materials or Services).

26. PLANS AND SPECIFICATIONS

26.1. When you supply us with plans, specifications, or other technical information (such as CAD drawings or any other electronic software that provides detailed information), you are responsible for providing accurate information, and we are entitled to rely on it.

26.2. If you give technical information relating to the specifications of the Materials required to complete the Services, it is your responsibility to verify the accuracy of the technical information or specifications before we place an order based on these measurements or specifications. We accept no responsibility for any loss, damages, or costs due to your failure to verify the accuracy of the technical information or specifications.

26.3. You warrant that any documentation supplied for the Services and its content or methods are accurate and suitable for the purpose for which they were created and that it is reasonable for us to rely on them.

26.4. You acknowledge that all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in our fact sheets, Price lists, or advertising material are approximate. You shall not be entitled to rely on such information, and any use of the Price lists does not constitute a sale by description and does not form part of this Agreement unless we expressly state this in writing.

26.5. If there is any discrepancy between the drawings and the specifications, precedence will be determined based on the election of authority agreed upon by both parties and recorded in writing. If no election of authority has been made, you acknowledge and agree that:

(a) figured specifications take precedence over scaled specifications;
(b) large-scale specifications take precedence over small-scaled specifications;
(c) amended drawings take precedence over older drawings; and
(d) all drawings and specifications are subject to any building consent.

26.6. We are not responsible for any errors in the Materials or Services or additional expenses if you supply inaccurate information.

27. LAND SUBSIDENCE AND DEFECTIVE EARTHWORKS

27.1. You acknowledge and agree that we are not liable for any:

(a) damage to the Services caused by the subsidence of the Worksite;
(b) any additional costs resulting from the absence of information on any defects or difficulties that were not discovered by a reasonable inspection of the Worksite; or
(c) deterioration to the Services or the Worksite caused by or resulting from the inadequacy or negligent application of earth fill or removal (unless such damage or deterioration may be adequately attributable to our negligence).

27.2. You agree that if earthmoving or excavation services have been provided by a third party (that you or your agents have engaged) and the services are found to be defective or not up to standard (including depth or dimensions), we reserve the right to charge a variation to remedy such services (in accordance with clause 8).

28. CONSTRUCTION CONTRACTS ACT 2002

28.1. We reserve the right to suspend the Services (in accordance with Part 2, subpart 4 of the CCA) by providing five days written notice if:

(a) a claimed amount is not paid in full by the due date;
(b) if we have issued a payment claim and no payment schedule has been provided; or
(c) a scheduled amount is not paid in full by the due date for its payment, even though the payment schedule you provide indicates a scheduled amount that you propose to pay us.

28.2. If we suspend the Services under clause 28.1, you acknowledge and agree that:

(a) the suspension of the Services is not in breach of this Agreement;
(b) the rights and obligations in this Agreement shall remain in full force and effect;
(c) we are not liable for any loss or damage you suffer (or by any third party claiming through you);
(d) we are entitled to an extension of time to complete the Services;
(e) the suspension does not affect any rights that would otherwise have been available to us under Part 2, subpart 3 of the CCLA; and
(f) we may exercise any rights for payments or adjudication of disputes under Part 2 and Part 3 of the CCA.

29. MEASUREMENT OF SERVICES

29.1. At the completion of the Services, you (or your agent) shall attend the Worksite and the Services shall be measured (and where you are absent and do not attend the Worksite, we shall carry out the necessary measurements and forward you the calculations). If you do not object to the measurements or calculations within seven (7) days of receiving such information, then it shall be deemed acceptance of the measurements and any subsequent calculations. If you dispute the measurements or calculations taken in your absence, we reserve the right to charge any additional time spent in providing new measurements or calculations as a variation (in accordance with clause 8).

30. SUBCONTRACTORS AND THIRD PARTY SUPPLIERS

30.1. We may subcontract any portion of the Services but may not assign or sublet all of the Services without your written consent.

30.2. We, at all times, shall be responsible for:

(a) our Subcontractor's services;
(b) ensuring that our subcontractors have appropriate insurance in place;
(c) obtaining applicable warranties, guarantees, certificates and records of work required from our subcontractors; and
(d) taking all reasonable steps to ensure our subcontractors comply with health and safety legislation regarding the Services (in accordance with clause 25).

30.3. If you request and authorise us to arrange the provision of Materials or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Materials or Services to you directly by a third party supplier. You agree to pay all Amounts Owing under this Agreement if we arrange any supply of Materials or Services provided directly to you by a third party supplier. We offer no warranty regarding the quality of the workmanship of the third party supplier (including if their recommendations are appropriate or accurate).

31. LIABILITY

31.1. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit you suffer arising out of our breach of this Agreement (including any unintentional misrepresentation we make to you regarding the Materials or Services).

31.2. To the extent permitted by law, our liability shall not exceed the Price of the Services we provide under this Agreement.

31.3. To the extent permitted by law, our total liability under or in connection with this Agreement and the Materials or Services is limited to, at our option:

(a) in the case of Materials, any one or more of the following: (i) the replacement of the Materials or the supply of equivalent Materials; (ii) the repair of the Materials; (iii) the payment of the expense of replacing the Materials or of acquiring equivalent Materials; or (iv) the payment of the expense of having the Materials repaired; or
(b) in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.

31.4. If, notwithstanding clause 30, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:

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(a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid to us for the applicable Materials or Services; or (ii) the actual loss or damage you suffer; and

(b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, customers, opportunities or loss of or damage to reputation.

31.5. The limitations and exclusions on liability in this clause 31 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.

31.6. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:

(a) for the acts or omissions of any third party;

(b) any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or

(c) to any third party.

32. GENERAL

32.1. Governing law: This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of New Zealand's courts.

32.2. Entire Agreement: This Agreement constitutes the entire agreement between the parties about its subject matter and supersedes all other agreements, representations and understandings.

32.3. Priority: To the extent of an inconsistency between:

(a) this Agreement;

(b) all other schedules to this Agreement;

(c) any privacy or data agreement (if applicable); and

(d) the order of priority above will apply (with (a) having the highest priority).

32.4. Subcontracting: We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.

32.5. Assignment: You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign all or part of the Amounts Owing to any other person.

32.6. Amendments: Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.

32.7. Notices: Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the relevant party's address (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.

32.8. Force majeure: We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).

32.9. Severability: If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be amended, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.

32.10. Waiver: A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

32.11. Termination: Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.

32.12. Survival: Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive either party's termination of this Agreement.

32.13. Rights of third parties: This Agreement is not intended to benefit anyone other than the parties.

32.14. Relationship: We will provide you with Materials or Services as an independent contractor. Nothing in this Agreement creates a partnership, joint venture, or employment relationship between the parties.

32.15. Non-exclusive: This Agreement is not exclusive, and you agree that we may provide any Materials or Services to any other person without restriction.

32.16. Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), constituting one instrument.

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