TERMS & CONDITIONS

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 APB Electrical (2008) Limited trading as APB Electrical 08 Ltd (our successors and assigns) or any person acting with the authority of APB Electrical (2008) Limited.

1.3. 'Client,' 'you', or 'your' means the Client purchasing the Materials and 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 you nominate for us to provide the Materials or Services.

1.7. 'Price' means the Price of the Services (in accordance with clause 6).

1.8. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy and any orders, purchases or schedules as applicable).

1.9. '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.

1.10. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.

1.11. '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.

1.12. 'Event of Default' means failure to comply with this Agreement (including your obligations in clause 6).

1.13. '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.

1.14. 'Personnel' means directors, officers, employees, agents and contractors.

1.15. 'CCLA' means the Contract and Commercial Law Act 2017.

1.16. 'PPSA' means the Personal Property Securities Act 1999.

1.17. 'CCA' means the Construction Contracts Act 2002.

1.18. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.

1.19. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.

1.20. '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 both 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.

3.8. This Agreement may only be amended with our written consent and shall supersede any other document or agreement between the parties.

4. AUTHORISED AGENTS

4.1. We are under no obligation to enquire as to the authority of any person placing an order on your behalf.

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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 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.
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 to any invoice we determine, and may do so at the time of receipt or at 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 allocated to preserve the maximum value of our Security Interests (as defined in the PPSA) in the Materials or Services.
6.7. We may require you to pay a deposit or provide a guarantee as security for the payment of any Amounts Owing.
6.8. We reserve the right to charge a minimum call-out fee of: (i) a travel rate; (ii) one (1) hour of labour; and (iii) the cost of any Materials used to undertake the Services unless otherwise agreed.
6.9. 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).
6.10. 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.
6.11. Payment may be made by online banking or any other method we agree to in writing.
6.12. Ownership of the Materials or Services remains with us until full payment has been cleared and received (in accordance with clause 18.1).
6.13. 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.
6.14. 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.
6.15. 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 additional costs or expenses 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; (v) there are changes to the level, line, position, or dimensions of the Services; or (vi) 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) faults found upon disassembling the premises (such as covered components, pipes or wires behind walls); (iii) poor weather conditions affecting the Services; (iv) limitations to accessing the Worksite (including if heavy machinery or trucks are unable to access the Worksite or if access issues require us to transport the Materials manually); (v) barriers obstructing access to an area of the Worksite (including hard rock or metal below the surface); (vi) incorrect measurements, plans or specifications you provide; (vii) health and safety considerations (including the discovery of asbestos); (viii) any workmanship by a third party being of poor quality or incomplete which requires remedial Services; or (ix) the lack of amenities at the Worksite that are required for the provision of the Services; 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) 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.

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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 any expenses incurred when 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. Where you request us to estimate the quantity of the Materials to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the estimate and the actual quantities provided, and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.

8.7. 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) obtaining sufficient title; (iv) obtaining consents; (v) ensuring all necessary services are available at the Worksite; or (vi) 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 Services completion;

(f) suspensions of the Services by either party;

(g) unforeseen health and safety requirements (such as the discovery of asbestos);

(h) if subcontractors or Materials are unavailable;

(i) any matter covered in clause 33.8 of this Agreement;

(j) the poor condition of any existing structure (or any adjoining structure);

(k) 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

(l) any other matter outside our reasonable control.

9.3. 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.

9.4. If you engage any third party, and there is a delay in the completion of the third party's services, then that delay shall entitle us to amend the scheduled start or completion date.

9.5. 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.

9.6. The final decision to enter any Worksite will be at our sole discretion, and our failure to deliver the Materials will not constitute a breach of this Agreement if access to the Worksite is not suitable for completion of the delivery.

9.7. 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).

9.8. If we are required to provide the Services urgently, which may require us to work outside regular business hours (including working through lunch breaks, weekends or public holidays), we reserve the right to charge additional costs unless otherwise agreed between the parties.

9.9. 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).

9.10. 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.

11.3. Any period during which the Services have 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 only be accepted (at our sole discretion) if:

(a) the Materials are returned to us within seven (7) days of the delivery date;

(b) we have agreed in writing to accept the return of the Materials;

(c) the Materials are returned in the condition they were received (including all packaging material, brochures and instructions in as new condition as possible).

12.2. You acknowledge and agree that:

(a) we will not accept the return of Materials that have not been stored or used correctly; and

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(b) the return of the Materials for credit may incur a restocking fee of twenty-five percent (25%) of the value of the Materials (and any additional freight costs we incur).

12.3. Subject to the conditions of the warranty set out in clause 12.4, we warrant that if any defect in any of our workmanship becomes apparent and is reported to us within twelve (12) months from the date of delivery (time being of the essence), we will either (at our sole discretion) replace or remedy the defect.

12.4. The conditions applicable to the warranty given under clause 12.3 are:

(a) the warranty shall not cover any defect or damage which may be caused by or arise through: (i) failure on your part to maintain any Materials or Services properly; (ii) failure on your part to follow any instructions or guidelines we provide; (iii) any use of the Materials or Services for any purpose other than the appropriate applications specified on the quote, invoice or any other documentation supplied to you; (iv) the continued use of any Materials or Services after any defect becomes apparent (or would have become apparent to a reasonably competent operator); (v) fair wear and tear; or (vi) any accident or act of God;

(b) 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

(c) the warranty shall cease, and we shall in no circumstances be liable if the defect is repaired or altered by any third party without our written consent.

12.5. 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

13.1. You authorise us, and any of our authorised agents, to collect, use, retain, and disclose 'personal information' (as defined in Part 1, Section 7 of the Privacy Act 2020) relating to you and your personnel, which you or they have provided to us, for the purposes set out below:

(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; 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 under the provisions of Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 (as amended by the Privacy Amendment Act 2025 (PAA 2025)), to access and to request correction of any personal information that we hold about you.

13.3. If you provide us with any personal information about a third party (including any member of your Personnel), you confirm and warrant that you are authorised to do so by the relevant individual and that you have informed the individual that:

(a) their personal information may be collected by us indirectly, in accordance with the information privacy principles of the Privacy Act 2020 (as amended by the PAA 2025); and

(b) they have the right to contact us to access, and, if applicable, request the correction of, any personal information we hold about them.

13.4. 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.

13.5. If you do not provide the requested personal information, 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 vest 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 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.

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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 33.7) 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.
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 are not apparent, they 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 you with possession of the Services (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 33.12).
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.
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 are overdue, or an Insolvency Event occurs, you give us irrevocable authority 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).

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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 any information and 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 heavy 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 notice before exercising your access rights;
(b) all inspections of the Services will be done within reasonable hours, with our consent and with us present on the Worksite;
(c) you shall not exercise access with such frequency or duration that causes delays with our progress or a distraction to our employees or contractors. We may (at our sole discretion) temporarily decline access to complete any necessary Services to meet the agreed deadlines; and
(d) 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 26).
21.3. You are responsible for organising temporary fencing to protect the Worksite from damage or theft if any fencing or other boundary is removed.

22. EXCESS MATERIALS

22.1. Unless both parties agree in writing to the contrary:
(a) only suitable new Materials will be used for the completion of the Services;
(b) any demolished Materials remain your property, and we are not responsible for removing any waste from the Worksite unless we have agreed to do so under the scope of the Services. All waste we generate will be placed in a designated area you appoint; and
(c) any Materials we bring to the Worksite that are not used at the completion of the Services will remain our property.

23. CLIENT'S RESPONSIBILITIES

23.1. You acknowledge and agree that it is your responsibility to:
(a) remove any furniture, furnishings or personal goods from the Worksite or vicinity of the Services and agree that we shall not be liable for any damage caused to those items if you do not remove such items from the Worksite;
(b) provide us with adequate access to amenities, including available water, electricity, toilets and washing facilities; and
(c) ensure any animals or children at or near the Worksite are safe.
23.2. 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 concerning 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.
23.3. 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.
23.4. 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 (and 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).
23.5. If you are a tenant (and not the owner of the land and premises), you warrant that consent for the Services has been obtained from the owner (or the owner's agent), and you agree to supply contact information for us to verify such consent before the commencement of the Services. Should you fail to notify us that you are not the owner of the land and premises, you acknowledge and agree that you shall be liable for all Amounts Owing and indemnify us against any claim made by the owner regarding the Services (excluding our negligence).
23.6. You warrant that you have sufficient funds available to honour your payment obligations and will, on request, provide us with evidence verifying such funds through an email or letter of credit from your banking institution.

24. INSURANCE AND RISK

24.1. 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 to supply and install Materials, you shall, at your cost, arrange, maintain, and give full effect to an insurance policy for the Worksite and the Services until completion (unless we agree otherwise in writing). Such insurance must: (i) provide cover for loss, damage, and liability arising out of or in connection with the provision of the Services, including cover for the Materials from the time they are delivered to the Worksite; (ii) remain current and uninterrupted for the entire period during which the Services are being performed; and (iii) be supported by satisfactory evidence of cover, including certificates of currency and any applicable endorsements, which you shall provide to us and make available upon request.
24.2. If you have requested that we diagnose a fault that requires investigation, disassembly, or testing, you will be charged all costs, regardless of whether the repair goes ahead.
24.3. If electrical wiring is required to be repositioned at the request of any third party, you agree to notify us immediately of any proposed changes and indemnify us against any additional costs incurred (and such variations shall be invoiced in addition to the Price in accordance with clause 8).
24.4. You warrant that any systems to which the Materials are to be installed can withstand the installation of the Materials and that any electrical connections (including meter boxes, main switches, circuit breakers, and electrical cables) are of suitable capacity to handle the Materials once installed. If damages are caused by power overloads or exceeding existing system capacities that are beyond our control, you shall be liable for any claims, losses, damages, costs or expenses, however caused or arising (unless due to our negligence).
24.5. Where we install the Materials, you warrant that the structure of the premises in or upon which the Materials are to be installed is sound and will sustain the installation. We shall not be liable for any damages or expenses caused by the premises being unable to accommodate the installation of the Materials.
24.6. If we are required to switch off the electrical supply when providing the Services, you agree that should you experience any loss of data or internet service, we shall not be held liable for any impact this may have. If we are required to isolate power to complete the Services, we will follow standard notification practices

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specified by the Powerco contract works manual. If we are required to delay isolation for the Services to proceed, you accept liability for any delay costs (including, but not limited to, extra traffic management, plant hire, and lost profit).

24.7. We shall, upon installation, ensure that all Materials are installed in a manner fully compliant with all industry standards and regulations (including the Electricity Industry Act 2010, the Electricity Act 1992, the AS/NZS 3000:2018 standards, and the AS/NZS 3000:2018 A1 amendments). If, for any reason, you expressly request the Materials to be installed in any way that goes against our recommendations or falls outside of industry standards: (i) a request detailing that requirement must be made in writing to us; and (ii) we offer no warranty regarding such Materials (or the installation method requested in writing).

24.8. Where we have provided information or figures to you regarding the performance of the Materials, you acknowledge that we have provided them in good faith and that they are estimates based on information from the Energy Efficiency and Conservation Authority (EECA) or industry-prescribed estimates. The efficiency of the Materials may be lower than estimated due to factors beyond our control (including the age of existing wiring or weather conditions).

24.9. Where you have supplied Materials for us to complete the Services, you accept responsibility for the suitability of purpose, quality and any faults inherent in those Materials, and if (in our opinion) it is believed that the Materials supplied will not conform to New Zealand regulations, set out by any Regulator, then we shall be entitled to halt all Services until the appropriate conforming Materials are sourced (and you will be solely liable for all additional expenses incurred, which will be invoiced as a variation to the Services under clause 8).

24.10. 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.

24.11. You acknowledge that you must ensure safe removal if asbestos or any other toxic substances are discovered at the Worksite. You further agree to indemnify us against any costs incurred due to such discovery. Under no circumstances will we handle the removal of any asbestos product unless we agree in writing.

24.12. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), we reasonably form the opinion that your premises are not safe for the installation of the Materials to proceed, we shall be entitled to delay the installation of the Materials until we are satisfied that it is safe. We may, at our sole discretion, agree to bring the premises up to a standard suitable for installation to proceed, but all such Services undertaken and any additional Materials supplied shall be treated as a variation (in accordance with clause 8).

24.13. You agree that variations of colour, grain or shade are inherent in natural Materials. While we will make every effort to match colour, grain or shade when selecting Materials, we shall not be liable for any variation in colour, grain or shade between batches of Materials or between new Materials and existing materials (and if there is a variation between batches or new and existing materials, the Materials and Services will not be considered to contain any defect or faulty workmanship).

24.14. You acknowledge and accept that:

(a) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in our fact sheets, Price lists, or advertising material are indicative only; and

(b) the Materials supplied may: (i) fade or change colour over time; (ii) expand, contract or distort as a result of exposure to heat, cold, or weather conditions; (iii) mark or stain if exposed to certain substances (including those stated by the manufacturer); and (iv) be damaged or scratched by impact.

24.15. 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.

25. NOTIFICATION OF SERVICES

25.1. 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.

25.2. We accept no liability for unforeseen or unmarked underground services at the Worksite. If underground services are damaged despite our taking all reasonable steps to identify the services present, all liability and repair costs shall be your responsibility (including the obligation to seek damages from the party that installed the services 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.

25.3. If you request that we 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, based on best practices, plans, drawings, and available information. You agree to indemnify us for all liability and repair costs resulting from damage to underground services that are not precisely located and marked by the certified service locator.

26. HEALTH AND SAFETY AT WORK ACT 2015

26.1. 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 other party's premises.

26.2. 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.

26.3. 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).

27. PLANS AND SPECIFICATIONS

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

27.2. If you provide technical information on the specifications of the Materials required to complete the Services, it is your responsibility to verify the accuracy of this 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.

27.3. 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.

27.4. 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-scale specifications;

(c) amended drawings take precedence over older drawings; and

(d) all drawings and specifications are subject to any building consent.

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

28. STATUTORY COMPLIANCE AND CONSENT

28.1. You agree to obtain (at your expense) all approvals, consents and licences that may be required for the Services (including consents, approvals or reports required after the commencement of the Services, such as geotechnical data).

28.2. We shall be responsible for providing the code compliance certificate on the completion of the Services, and both parties acknowledge and agree that:

(a) we shall be responsible for applying for and obtaining the code compliance certificate for the Services; and

(b) you shall provide us with all the necessary information to apply for code compliance certificates.

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28.3. Both parties shall comply with all 'regulations' (as defined in Part 1, section 5 of the Electricity Industry Act 2010) for the Services supplied under this Agreement.

29. CONSTRUCTION CONTRACTS ACT 2002

29.1. You acknowledge and agree that this Agreement constitutes a 'construction contract' as defined in Part 1, section 5 of the CCA, being a contract for the provision of construction work, and includes any variation to this Agreement under clause 8.

29.2. 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, even though the payment schedule you provide indicates an amount you propose to pay us.

29.3. If we suspend the Services under clause 29.2, 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 regarding payments or the adjudication of disputes under Parts 2 and 3 of the CCA.

30. LAND SUBSIDENCE AND DEFECTIVE EARTHWORKS

30.1. You acknowledge and agree that we are not liable for any:
- (a) damage to the Services caused by the subsidence of the Worksite (including any partial subsidence) or additional costs resulting from the absence of information on any foundation, defects or difficulties that were not discovered by a reasonable inspection of the Worksite;
- (b) 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.

30.2. You agree that where earthmoving or excavation work has been provided by a third party (you have engaged) and such work is found to be defective or not up to standard (including depth or dimensions), we reserve the right to charge a variation to remedy such work (in accordance with clause 8).

31. SUBCONTRACTORS AND THIRD PARTY SUPPLIERS

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

31.2. 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 26).

31.3. 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 third-party supplier's workmanship (including whether their recommendations are appropriate or accurate).

32. LIABILITY

32.1. 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).

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

32.3. 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 Material(s) or the supply of equivalent Material(s); (ii) the repair of the Material(s); (iii) the payment of the expense of replacing the Material(s) or of acquiring equivalent Material(s); or (iv) the payment of the expense of having the Material(s) repaired; or
- (b) in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.

32.4. If, notwithstanding clause 31, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- (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, clients, opportunities or loss of or damage to reputation.

32.5. The limitations and exclusions on liability in this clause 32 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.

32.6. 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 omission performed in accordance with your instructions (or instructions from your authorised agents); or
- (c) to any third party.

33. GENERAL

33.1. 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.

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

33.3. 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).

33.4. 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 their performance.

33.5. 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.

33.6. 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.

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33.7. 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.

33.8. 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).

33.9. 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 modified, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.

33.10. 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.

33.11. 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.

33.12. 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.

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

33.14. 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.

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

33.16. 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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