

CGIE Maintenance Limited – Standard Terms and Conditions of Contract

Please read these Terms and Conditions carefully, as they set out the parties' legal rights and obligations in relation to our provision of goods and services to you.

1. Definitions and interpretation

1.1. In these Terms and Conditions:

“**Business Hours**” means between 07:30 and 16:00 on a Working Day;

“**Contract Term**” means the term of a Project as detailed in the Order Form.

“**Customer**” “**you**” and “**your**” means the customer for Products and Services under a Project, as identified in the Order Form;

“**Customer Representative(s)**” means the person or persons identified as such in the Order Form;

“**Effective Date**” means the date when we receive a copy of the Order Form that has been signed by you, providing that the signed Order Form is received by us within the period of 30 days following the date of our providing the Order Form to you;

“**Equipment**” means the equipment we use to provide the Products and Services under a Project and which shall remain at all times our property, including any specific tools acquired for the purposes of delivering the Services for a Project;

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“**Products**” means all materials and products provided by us under a Project, details of which are set out in the Order Form (or, to the extent that no such details are set out in the Order Form, details of which will be agreed between the parties acting reasonably from time to time);

“**Order Form**” means the order document issued by us detailing the scope of the Products and Services and other matters relating to a Project;

“**Project**” means a contract between us and you for the provision of Products and Services incorporating these Terms and Conditions and an Order Form, and any amendments to such a contract from time to time;

“**Premises**” means the location where we will provide the Products and Services, as specified in the Order Form;

“**Price**” means the price payable by you to us in respect of a Project, which is specified in the Order Form and which may be varied in accordance with Clause 7;

“**Provider**” “**we**” “**us**” and “**our**” means CGIE Maintenance Limited and its successors and assigns or any person acting on behalf of and with the authority of CGIE Maintenance Limited;

“**Services**” means the services supplied by us under a Project, details of which are set out in the Order Form (or, to the extent that no such details are set out in the Order Form, details of which will be agreed between the parties acting reasonably from time to time);

“**The Party**” or “**the Parties**” in these Terms and Conditions shall mean the Customer and the Provider together;

“**Working Day**” means any weekday, other than a bank or public holiday in Auckland;

1.2. In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

1.2.1. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

1.2.2. any subordinate legislation made under that statute or statutory provision.

1.3. The Clause headings do not affect the interpretation of these Terms and Conditions.

1.4. In these Terms and Conditions, “persons” includes companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

2. Acceptance

2.1. Any instructions received by us from you for the supply of Products and Services shall constitute acceptance of the Terms and Conditions contained herein.

- 2.2. Upon acceptance of these Terms and Conditions by you the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with our written consent.
- 2.3. These Terms and Conditions are to be read in conjunction with our Order Form as provided by us to you. If there are any inconsistencies between the documents then the Terms and Conditions contained in this document shall prevail.
- 2.4. You shall give us not less than fourteen (14) days prior written notice of any proposed change of ownership or effective control where you are a non-natural person or any change in your name and/or any other change in your details (including but not limited to changes in your address). You shall be liable for any loss incurred by us as a result of your failure to comply with this clause.

3. Projects

- 3.1. Each Project will come into force on its Effective Date and will continue in force for the entire Contract Term, unless and until terminated in accordance with Clause 14.

4. Services

- 4.1. We will provide the Products and Services to you in accordance with the terms of each Project, and at all times in a professional manner and in accordance with appropriate standards.
- 4.2. The time for delivery of the Products and Services will not be an essential term of the parties' agreement.
- 4.3. We may suspend the provision of the Products and Services if you fail to pay by the due date any amount due to us in respect of a Project.
- 4.4. We may need to acquire specific tools from time to time additional to our Equipment in order to provide the Services under a Project. At our sole discretion, and regardless that the tools acquired will become part of our Equipment as defined at clause 1.1, the cost of tools acquired in this manner will be added to the Price and we will itemise the same on our invoice.
- 4.5. From time to time during the Contract Term we may be unable to supply the Products and Services by reason of personnel illness or personnel shortage, in which case:
 - 4.5.1. we will use reasonable endeavours to engage alternative personnel to supply the Products and Services; and
 - 4.5.2. subject to our compliance with Clause 4.5.1, we will not be in breach of the terms of the Project by virtue of any failure to supply the Products and Services arising out of such inability.
- 4.6. We will ensure that all personnel involved in the provision of the Products and Services have:
 - 4.6.1. been interviewed by us;
 - 4.6.2. supplied proof of identity and satisfactory references and evidence of electrical registration and current licensing to us; and
 - 4.6.3. are competent and suitably experienced and have been properly trained in the provision of the Products and Services.

5. Customer obligations

- 5.1. You will provide to, or procure for, us any:
 - 5.1.1. information and documentation;
 - 5.1.2. third party co-operation;
 - 5.1.3. governmental, legal or regulatory licences, consents or permits; and
 - 5.1.4. access to the Premises in order to carry out works reasonably necessary to enable us to discharge our obligations under any Project;
- 5.2. You will ensure that the Premises are suitably prepared and available at the time(s), as agreed by the parties in writing from time to time, to enable us to discharge our obligations under any Project.
- 5.3. You will indemnify us and will keep us indemnified against any and all losses, costs, expenses, damages and liabilities (including legal expenses and amounts paid in settlement of legal claims or proceedings) arising directly or indirectly out of any breach by you of this Agreement.

6. Representatives

- 6.1. You will ensure that all instructions in relation to the matters contemplated in these Terms and Conditions will be given by a Customer Representative to us, and we:
 - 6.1.1. may treat all such instructions as your fully authorised instructions;
 - 6.1.2. will not comply with any other instructions in relation to the matters contemplated in these Terms and Conditions without first obtaining the consent of a Customer Representative; and
 - 6.1.3. any and all additional Products and Services requested by you or a Customer Representative that are outside the scope of the Project as detailed on our Order Form will result in the Price on the Order Form (and subsequent invoices) being adjusted and itemised accordingly.

7. Price and Payment

- 7.1. At our sole discretion the Price shall be either;
 - 7.1.1. as indicated on our monthly invoices provided by us to you in respect of Products and Services supplied; or
 - 7.1.2. the Price quoted on our Order Form which shall be binding upon us provided that you shall accept our quotation in writing within thirty (30) days.
- 7.2. We may, by giving notice to you, increase the Price of the Products and Services to reflect any increase in the cost to us beyond our reasonable control (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 7.3. At our sole discretion a 50% deposit may be required. Any deposit taken shall be applied against our first invoice(s).
- 7.4. Time for payment for the Products and Services shall be of the essence and payment of an invoice shall be due on the 20th day of the month following the date of the invoice, or such other time as we may stipulate in our sole discretion.
- 7.5. Payment must be made in cleared funds by direct credit via electronic/online banking to the account specified on our invoice, or by any other method stipulated by us.
- 7.6. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

8. Title

- 8.1. You acknowledge and agree that ownership of the Products shall not pass, until:
 - 8.1.1. You have paid us all amounts owing for the Project involving the Products; and
 - 8.1.2. You have met all other obligations due by you to us in respect of all contracts between us and you.
- 8.2. Receipt by us of any form of payment other than cleared funds in our bank account, shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then our ownership or rights in respect of the Project, and this agreement, shall continue.
- 8.3. It is further agreed that:
 - 8.3.1. until ownership of the Products passes to you in accordance with clause 8.1 that you are only a bailee of the Products and unless the Products have become fixtures you must return the Products to us on request;
 - 8.3.2. You hold the benefit of your insurance of the Products on trust for us and must pay to us the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
 - 8.3.3. the production of these Terms and Conditions by us shall be sufficient evidence of our rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with us to make further enquiries;
 - 8.3.4. You must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If you sell, dispose or part with possession of

the Products then you must hold the proceeds of any such disposition on trust for us and must pay or deliver the proceeds to us on demand;

8.3.5. You should not convert or process the Products or intermix them with other goods but if you do so then you hold the resulting product on trust for the benefit of us and must sell, dispose of or return the resulting product to us as we so direct;

8.3.6. unless the Products have become fixtures you irrevocably authorise us to enter any premises where we believe the Products are kept and recover possession of the Products;

8.3.7. We may recover possession of any Products in transit whether or not delivery has occurred;

8.3.8. You shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain our property;

8.3.9. We may commence proceedings to recover the Price notwithstanding that ownership of the Products has not passed to you.

9. Security and Charge

9.1. In consideration of us agreeing to provide the Project, you and the Guarantors charge by way of mortgage all of your rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by you and or the Guarantors either now or in the future, to secure the performance by you of your obligations under these terms and conditions (including, but not limited to, the payment of any money).

9.2. You and the Guarantors indemnify us from and against all our costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising our rights under this clause.

9.3. You and the Guarantors irrevocably appoint us and each of our directors as your true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on your behalf.

10. Warranties

10.1. You warrant to us that you have the legal right and authority to enter into and perform your obligations required by each Project.

10.2. We warrant to you that:

10.2.1. We have the legal right and authority to enter into and perform our obligations required by each Project; and

10.2.2. the Services will be performed with reasonable care and skill and in accordance with the provisions of the Electricity (Safety) Regulations 2010; and

10.2.3. the Products are covered only by the individual manufacturer's warranty in relation to each Product and we make no warranty as to the suitability and performance of the Products used in providing the Project.

10.3. If you believe that Services have not been provided in accordance with Clause 10.2.2, then you must:

10.3.1. notify us promptly; and

10.3.2. allow and enable us to review the Products and Services provided and re-perform the relevant Services or re-provide the relevant Products.

10.4. All of the parties' warranties and representations in respect of the subject matter of the Project are expressly set out in these Terms and Conditions and in the Order Form. To the maximum extent permitted by applicable law and subject to Clause 10.1, no other warranties or representations concerning the subject matter of the Project will be implied into these Terms and Conditions, the Order Form, the Project or any other contract.

11. Limitations and exclusions of liability

11.1. Nothing in these Terms and Conditions will:

- 11.1.1. limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - 11.1.2. limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - 11.1.3. limit any liability of a party in any way that is not permitted under applicable law;
 - 11.1.4. exclude any liability of a party that may not be excluded under applicable law; or
 - 11.1.5. limit or exclude any statutory rights that a party has as a consumer.
- 11.2. The limitations and exclusions of liability set out in this Clause 11 and elsewhere in these Terms and Conditions:
- 11.2.1. are subject to Clause 11.1; and
 - 11.2.2. govern all liabilities arising under the Project or in relation to the subject matter of the Project, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
- 11.3. We will not be liable to you for any losses arising out of a Force Majeure Event.
- 11.4. We will not be liable to you in respect of any business losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.
- 11.5. We will not be liable to you in respect of any special, indirect or consequential loss or damage.
- 11.6. Our aggregate liability to you will not exceed the total amount paid and payable by you to us under the Project.

12. Force Majeure Event

- 12.1. Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations required by any Project (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

13. Default and Consequences of Default

- 13.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2. If you owe us any money you shall indemnify us from and against all costs and disbursements incurred by us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, our collection agency costs, and bank dishonour fees).
- 13.3. Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) under these Terms and Conditions we may suspend or terminate the provision of Products and Services to you. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause.

14. Termination

- 14.1. Either party may terminate a Project at any time by giving at least 30 days' written notice to the other party.
- 14.2. Either party may terminate a Project immediately by giving written notice to the other party if the other party:
- 14.2.1. commits any material breach of any provision of these Terms and Conditions or the relevant Order Form, and:
 - 14.2.2. the breach is not remediable; or
 - 14.2.3. the breach is remediable, but the other party fails to remedy the breach within 10 Working Days of receipt of a written notice requiring it to do so; or
 - 14.2.4. persistently breaches these Terms and Conditions and/or the relevant Order Form.
- 14.3. Either party may terminate a Project immediately by giving written notice to the other party if:
- 14.3.1. the other party:
 - is dissolved;

ceases to conduct all (or substantially all) of its business;

is or becomes unable to pay its debts as they fall due;

is or becomes insolvent or is declared insolvent; or

convenes a meeting, or makes or proposes to make any arrangement or composition, with its creditors;

14.3.2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

14.3.3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Project); or

14.3.4. where that other party is an individual that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

14.4. We may terminate a Project immediately at any time by giving written notice to you if you fail to pay in full and on time any amount due to us, whether due in respect of that Project or otherwise.

15. Effects of termination

15.1. Upon termination of a Project, all the provisions of these Terms and Conditions and the Order Form will cease to have effect, save that the following provisions of these Terms and Conditions will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

15.2. Termination of a Project will not affect either party's accrued liabilities and rights (including accrued rights to be paid) as at the date of termination.

15.3. Where a Project is terminated by us in accordance with any of the provisions of clause 14 you agree that we shall have unfettered access to the Premises in order to retrieve any Equipment and any Products that have not become fixtures and that payment has not been received for.

15.4. You further agree, in circumstances where you are not the proprietor of the Premises, that we shall be permitted to seek a separate agreement with the proprietor of the Premises to enable us to retrieve any Equipment and any Products in accordance with the provisions of clause 15.3.

16. Non-solicitation

16.1. You will not without our prior written consent, either during the Contract Term of any Project or within 3 months after the date of effective termination of the most recent Project, engage, employ or otherwise solicit for employment any employee or contractor of ours who has been involved in the Project or the performance of the Services.

17. Notices

17.1. Any notice given under these Terms and Conditions must be in writing (whether or not described as "written notice" in these Terms and Conditions) and must be delivered personally, sent by courier, or sent by email, for the attention of the relevant person, and to the relevant address, email address given below (or as notified by one party to the other in accordance with this Clause).

17.1.1. The Provider:

CGIE Maintenance Limited, Unit 2, 2 Westech Place, Kelston, Auckland 0602.

Email: maintenance@cgie.co.nz

17.1.2. The Customer:

As detailed on the Order Form on the front page of these Terms and Conditions.

17.2. A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

17.2.1. where the notice is delivered personally, at the time of delivery;

17.2.2. where the notice is sent by courier, 48 hours after sending; and

17.2.3. where the notice is sent by email, at the time of the transmission (providing that the sending party retains written evidence of the transmission).

18. Confidentiality

- 18.1. The provisions of these Terms and Conditions are strictly confidential to the parties. Neither party may disclose or permit to be disclosed any provision of, or any information (and particularly any financial information) relating to the contract the subject of these Terms and Conditions to any person not a party to these Terms and Conditions without first obtaining the written consent of the other party as to both the person to whom disclosure is to be made and the terms of such disclosure.

19. Intellectual Property

- 19.1. To the extent that we develop or create any intellectual property as the result of providing the Products and Services or performing a Project, including but not limited to copyright in any written or other works, we shall retain ownership of all the rights in that intellectual property and any commercial applications thereof.
- 19.2. The rights to intellectual property as defined in clause 19.1 shall not limit our obligations of confidentiality as provided by Clause 18 above.

20. Dispute Resolution

- 20.1. We will endeavour, but will not be required, to resolve all disputes between you and us amicably provided that if we cannot resolve a dispute, then no proceedings will be issued in Court in respect of the dispute without the dispute first being mediated by a single mediator appointed by agreement between the parties and failing agreement and on the application of one of them, by the Chief Executive Officer for the time being of the Resolution Institute of New Zealand.

21. Compliance with Laws

- 21.1. The parties shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the supply of Products and Services, including the Health and Safety at Work Act 2015, the Electricity Act 1992, the Electricity (Safety) Regulations 2010 and the New Zealand Electrical Codes of Practice.

22. Privacy Act 1993

- 22.1. You authorise us or our agent to:
 - 22.1.1. access, collect, retain and use any information about you (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing your creditworthiness; or
 - 22.1.2. for the purpose of marketing products and services to you.
 - 22.1.3. disclose information about you, whether collected by us from you directly or obtained by us from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by you.
- 22.2. Where you are a natural person the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3. You shall have the right to request a copy of the information we retain about you and the right to request us to correct any incorrect information about you held by us.

23. General

- 23.1. Our failure to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision.
- 23.2. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3. No Project will constitute a partnership, agency relationship or contract of employment between the parties.
- 23.4. These Terms and Conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 23.5. We shall be under no liability whatever to you for any indirect loss and/or expense (including loss of profit) suffered by you arising out of a breach by us of these Terms and Conditions.

- 23.6. In the event of any breach of this contract by us your remedies shall be limited to damages. Under no circumstances shall our liability exceed the Price of the Products and Services.
- 23.7. You shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to you by us.
- 23.8. We reserve the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which we notify you of such change.
- 23.9. You warrant that you have the power to enter into this agreement and have obtained all necessary authorisations to allow you to do so, you are not insolvent and that this agreement creates binding and valid legal obligations on you.
- 23.10. Neither these Terms and Conditions nor any Order Form may be varied except by a written document signed by or on behalf of each of the parties.
- 23.11. We may freely assign our rights and obligations under any Project without your consent. Save as expressly provided in this Clause or elsewhere in these Terms and Conditions, neither party may, without the prior written consent of the other party, assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under any Project.
- 23.12. Each Project is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to any Project are not subject to the consent of any third party.