

**1. Definitions**

- 1.1 “Energy Services” means Energy Services Tauranga Ltd, its successors and assigns or any person acting on behalf of and with the authority of Energy Services Tauranga Ltd.
- 1.2 “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by Energy Services to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by Energy Services to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Energy Services to the Customer.
- 1.5 “Price” means the Price payable for the Works as agreed between Energy Services and the Customer in accordance with clause 4 below.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with Energy Services’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Energy Services.
- 2.3 If a site manager, consultant or any other agent or representative of the Customer signs for or orders any Works or variations to be undertaken by Energy Services the Customer warrants that they have express permission and authorisation to act on behalf of the Customer.
- 2.4 In the event the Customer requests Energy Services to use their discretion in relation to the placement and positioning of any electrical components (including, but not limited to, light fittings and light switches) due to the absence of an electrical plan, and the Customer is not satisfied with the choice of placement or position, then Energy Services shall not be held liable for any loss, damages or costs howsoever arising from Energy Services’ decisions in relation to the same.
- 2.5 In the event the Customer does not provide a proper electrical plan or scope of works and the costs associated with doing the electrical Works increase, then these costs shall be the responsibility of the Customer.
- 2.6 None of Energy Services’ agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Energy Services in writing nor is Energy Services bound by any such unauthorised statements.

**3. Change in Control**

- 3.1 The Customer shall give Energy Services not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Energy Services as a result of the Customer’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At Energy Services’ sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by Energy Services to the Customer in respect of Works performed or Materials supplied; or
  - (b) Energy Services’ quoted Price (subject to clause 4.2) which shall be binding upon Energy Services provided that the Customer shall accept Energy Services’ quotation in writing within thirty (30) days.
- 4.2 Energy Services reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to Energy Services in the cost of labour or materials which are beyond Energy Services’ control.
- 4.3 At Energy Services’ sole discretion a deposit of up to thirty percent (30%) may be required.
- 4.4 The Price shall not include any installation costs unless agreed to in writing.
- 4.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Energy Services, which may be:
  - (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with Energy Services’ specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed;
  - (c) for certain approved Customer’s, due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Energy Services.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Energy Services.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Energy Services an amount equal to any GST Energy Services must pay for any supply by Energy Services under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay

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any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. Delivery of the Works

- 5.1 Subject to clause 5.2 it is Energy Services' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Energy Services claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Energy Services' control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify Energy Services that the site is ready.
- 5.3 Energy Services may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time or date given by Energy Services to the Customer is an estimate only. Energy Services shall not be liable for any loss or damage whatsoever due to failure by Energy Services to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Energy Services.

### 6. Risk

- 6.1 If Energy Services retains ownership of the Materials under clause 9 then;
- (a) where Energy Services is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
    - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at Energy Services' address; or
    - (ii) the Materials are delivered by Energy Services or Energy Services' nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
  - (b) where Energy Services is to both supply and install Materials then Energy Services shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 6.2 Notwithstanding the provisions of clause 6.1 if the Customer specifically requests Energy Services to leave Materials outside Energy Services' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 6.3 Where the Customer has supplied materials for Energy Services to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Materials. Energy Services shall not be responsible for any defects in the works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of Materials supplied by the Customer.

### 7. Access

- 7.1 The Customer shall ensure that Energy Services has clear and free access to the work site at all times to enable them to undertake the works. Energy Services shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Energy Services.

### 8. Underground Locations

- 8.1 Prior to Energy Services commencing any work the Customer must advise Energy Services of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 8.2 Whilst Energy Services will take all care to avoid damage to any underground services the Customer agrees to indemnify Energy Services in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

### 9. Title

- 9.1 Energy Services and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid Energy Services all amounts owing to Energy Services; and
  - (b) the Customer has met all of its other obligations to Energy Services.
- 9.2 Receipt by Energy Services of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Energy Services on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Energy Services and must pay to Energy Services the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.

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- (c) the production of these terms and conditions by Energy Services shall be sufficient evidence of Energy Services' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Energy Services to make further enquiries.
- (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Energy Services and must pay or deliver the proceeds to Energy Services on demand.
- (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Energy Services and must sell, dispose of or return the resulting product to Energy Services as it so directs.
- (f) unless the Materials have become fixtures the Customer irrevocably authorises Energy Services to enter any premises where Energy Services believes the Materials are kept and recover possession of the Materials.
- (g) Energy Services may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Energy Services.
- (i) Energy Services may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

### 10. Personal Property Securities Act 1999 ("PPSA")

- 10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials previously supplied by Energy Services to the Customer (if any) and all Materials that will be supplied in the future by Energy Services to the Customer.
- 10.2 The Customer undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Energy Services may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Energy Services for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Energy Services; and
  - (d) immediately advise Energy Services of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 10.3 Energy Services and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by Energy Services, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Customer shall unconditionally ratify any actions taken by Energy Services under clauses 10.1 to 10.5.

### 11. Security and Charge

- 11.1 In consideration of Energy Services agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Energy Services from and against all Energy Services' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Energy Services' rights under this clause.
- 11.3 The Customer irrevocably appoints Energy Services and each director of Energy Services as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

### 12. Customer's Disclaimer

- 12.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Energy Services or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Energy Services and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgment.

### 13. Defects In Materials

- 13.1 The Customer shall inspect the Works/Materials on delivery and shall within thirty (30) days of delivery (time being of the essence) notify Energy Services of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Energy Services an opportunity to inspect the Works/Materials within a reasonable time following delivery if the Customer believes the Works/Materials are defective in any way. If the Customer shall fail to comply with these provisions the Works/Materials shall be presumed to be free from any defect or damage. For defective Works/Materials, which Energy Services has agreed in writing that the Customer is entitled to reject, Energy Services' liability is limited to either (at Energy Services' discretion) replacing the Works/Materials or repairing the Works/Materials.

**14. Returns**

- 14.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 13.1; and
  - (b) the Materials are still yet to be installed; and
  - (c) Energy Services has agreed in writing to accept the return of the Materials; and
  - (d) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (e) Energy Services will not be liable for Materials which have not been stored or used in a proper manner; and
  - (f) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.2 Energy Services may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty five percent (25%) of the value of the returned Materials plus any freight.
- 14.3 Returned Materials may (at Energy Services' sole discretion), incur restocking and handling fees.
- 14.4 Non-stocklist items or Materials made or ordered to the Customer's specifications are under no circumstances acceptable for credit or return.

**15. Warranties**

- 15.1 The conditions applicable to the warranty are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Materials; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Energy Services; or
    - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and Energy Services shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Energy Services' consent.
  - (c) in respect of all claims Energy Services shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.2 For Materials not manufactured by Energy Services, the warranty shall be the current warranty provided by the manufacturer of the Materials. Energy Services shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
- 15.3 In the case of second hand Materials, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Energy Services as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Energy Services shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

**16. Consumer Guarantees Act 1993**

- 16.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Energy Services to the Customer.

**17. Default and Consequences of Default**

- 17.1 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 Energy Services' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes Energy Services any money the Customer shall indemnify Energy Services from and against all costs and disbursements incurred by Energy Services in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Energy Services' collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies Energy Services may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Energy Services may suspend or terminate the supply of Works to the Customer. Energy Services will not be liable to the Customer for any loss or damage the Customer suffers because Energy Services has exercised its rights under this clause.
- 17.4 Without prejudice to Energy Services' other remedies at law Energy Services shall be entitled to cancel or suspend all any part of any order of the Customer which remains unfulfilled and all amounts owing to Energy Services shall, whether or not due for payment, become immediately payable if:
- (a) Energy Services receives a credit alert from a credit reporting agency;
  - (b) any money payable to Energy Services becomes overdue, or in Energy Services' opinion the Customer will be unable to make a payment when it falls due;
  - (c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**18. Dispute Resolution**

- 18.1 All disputes and differences between the Customer and Energy Services touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators

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(one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

### 19. Compliance with Laws

- 19.1 The Customer and Energy Services shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 19.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 19.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 19.4 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

### 20. Cancellation

- 20.1 Energy Services may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice Energy Services shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Energy Services for Works already performed. Energy Services shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Energy Services as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Works that are cancelled within twelve (12) hours of the arranged commencement time will attract a cancellation fee of up to one (1) hours labour and all travel costs if the technician has left Energy Services' office.
- 20.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 21. Privacy Act 1993

- 21.1 The Customer authorises Energy Services or Energy Services' agent to:
  - (a) access, collect, retain and use any information about the Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by Energy Services from the Customer directly or obtained by Energy Services 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 the Customer.
- 21.2 Where the Customer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Customer shall have the right to request Energy Services for a copy of the information about the Customer retained by Energy Services and the right to request Energy Services to correct any incorrect information about the Customer held by Energy Services.

### 22. Unpaid Energy Services' Rights

- 22.1 Where the Customer has left any item with Energy Services for repair, modification, exchange or for Energy Services to perform any other service in relation to the item and Energy Services has not received or been tendered the whole of any moneys owing to it by the Customer, Energy Services shall have, until all moneys owing to Energy Services are paid:
  - (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of Energy Services shall continue despite the commencement of proceedings, or judgment for any moneys owing to Energy Services having been obtained against the Customer.

### 23. Equipment Hire

- 23.1 Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered the Supplier retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Supplier shall have right to charge the Client the full cost of replacing the Equipment.
- 23.2 The Client shall;
  - (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Supplier to the Client.
- 23.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public

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Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### 24. Construction Contract Act 2002

24.1 The Customer hereby expressly acknowledges that:

- (a) Energy Services has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
  - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
  - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Energy Services by a particular date; and
  - (iv) Energy Services has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Energy Services suspends work, it:
  - (i) is not in breach of contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
  - (iii) is entitled to an extension of time to complete the contract; and
  - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if Energy Services exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to Energy Services under the Contractual Remedies Act 1979; or
  - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Energy Services suspending work under this provision.

### 25. General

- 25.1 The failure by Energy Services to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Energy Services' right to subsequently enforce that provision. 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.
- 25.2 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 Tauranga.
- 25.3 Energy Services shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Energy Services of these terms and conditions (alternatively Energy Services' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Energy Services nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 Energy Services may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 25.6 The Customer agrees that Energy Services may amend these terms and conditions at any time. If Energy Services makes a change to these terms and conditions, then that change will take effect from the date on which Energy Services notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Energy Services to provide any Works to the Customer.
- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.