

1. Definitions

- 1.1 "Company" means Health & Safety Systems Ltd, its successors and assigns or any person acting on behalf of and with the authority of Health & Safety Systems Ltd.
- 1.2 "Client" means the person/s requesting the Company to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Services" means all Services supplied by the Company to the Client at the Client's request from time to time, and includes any goods, documents, designs, reports, drawings or materials ("Goods") supplied, consumed, created or deposited incidentally by the Company in the course of it conducting, or supplying to the Client, any Services.
- 1.4 "Price" means the price payable for the Services as agreed between the Company and the Client in accordance with clause 4 of this contract.
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, either party's Intellectual Property, operational or technical information, know-how, Intellectual Property, trade secrets, financial and commercial affairs, contracts, client information, pricing details and other commercially valuable or sensitive information of whatever description which a party regards as confidential, proprietary or of a commercially or personally sensitive nature. It excludes information which:
- (a) is lawfully in the public domain before is disclosure, or enters the public domain afterwards through an authorised disclosure;
 - (b) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis;
 - (c) is rightfully known by the receiving party before disclosure to it..

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Company.
- 2.2 These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Company.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

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

4. Price and Payment

- 4.1 At the Company's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Company to the Client; or
 - (b) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation. Any variation from the plan or specifications of scheduled Services (including, but not limited to, any variation in design, or due to unforeseen circumstances, or as a result of increases to the Company in the cost of materials and labour) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Company's sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Company, which may be:
- (a) on completion of the Services;
 - (b) by way of instalments/progress payments in accordance with the Company's payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed;
 - (c) due twenty (20) days following the end of the month in which a statement is posted to the Client'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 Client by the Company.
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Company.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Company an amount equal to any GST the Company must pay for any provision of Services by the Company under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Provision of Services

- 5.1 Provision of the Services to a third party nominated by the Client is deemed to be provision to the Client for the purposes of this agreement.
- 5.2 Any time specified by the Company for provision of the Services is an estimate only and the Company will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Company is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Company shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

6. Nominated Consultants

- 6.1 The Company shall engage consultants (as specified in the quotation) acting solely as agent on behalf of the Client and the following shall apply:
- (a) the Company shall be entitled to enter into contracts with such consultants in the name of the Client; and
 - (b) the Client shall be responsible for all payments to such consultants and shall reimburse the Company for the payment thereof by the due date for payment, as specified by the Company on any invoice or other form as being the date for payment; and
 - (c) the Company does not warrant the accuracy or quality of the consultant's work or warrant that the recommendations of the consultant are appropriate or adequate or are fit for their purpose or that they are not given negligently. The Client agrees that they shall not make any demand on the Company, or commence any legal proceedings against the Company, and the Company shall have no liability, whether in negligence or otherwise, to the Client in relation to any work performed by the consultant.

7. Extension of Contract Period

- 7.1 The Company shall be entitled to claim an extension to the term of the contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of the Company. These matters shall include, but are not limited to delays caused by:
- (a) response(s) to information request(s) made by the Company to the Client not being available when required;
 - (b) approval authorities response times for requests for preliminary decisions/information;
 - (c) information from consultants, councils or referral agencies not being available when required;
 - (d) changes to the design brief being requested by the Client;
 - (e) time taken by the approval authority for the granting of required approvals;
 - (f) any other variation to the contract.

8. Risk

- 8.1 Irrespective of whether the Company retains ownership of any Goods, all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Company may repossess the Goods. The Client must insure all Goods on or before delivery.
- 8.2 The Company reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Goods as a result of the Client's failure to insure in accordance with clause 6.1.

9. Access and Underground Locations

- 9.1 The Client shall ensure that the Company has clear and free access to the nominated site at all times to enable them to undertake the Services. The Company 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 the Company.
- 9.2 Prior to the Company commencing the Services the Client must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client 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. Whilst the Company will take all care to avoid damage to any underground services the Client agrees to indemnify the Company 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 this clause 9.2.

10. Compliance with Laws

- 10.1 The Client and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

11. Title

- 11.1 The Client acknowledges and agrees that the Client's obligations to the Company for the provision of Services shall not cease, and subsequent ownership of the Goods shall not pass, until:
- (a) the Client has paid the Company all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.
- 11.2 Receipt by the Company 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 and until then the Company's ownership or rights in respect of the Goods, and this agreement, shall continue.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Material and must return the Goods to the Company immediately upon request by the Company;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of sale of the Goods on trust for the Company and must pay or deliver the proceeds to the Company on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Company and must dispose of or return the resulting product to the Company as the Company so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company;
 - (f) the Client irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.

12. Personal Property Securities Act 1999 (“PPSA”)

- 12.1 Upon assenting to these terms and conditions in writing the Client 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 Goods and/or collateral (account) – being a monetary obligation of the Client to the Company for Services – that have previously been supplied and that will be supplied in the future by the Company to the Client.
- 12.2 The Client 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 the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Company.
- 12.3 The Company and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Company, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by the Company under clauses 12.1 to 12.5.

13. Security and Charge

- 13.1 In consideration of the Company agreeing to provide Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 13.3 The Client irrevocably appoints the Company and each director of the Company as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Client's Disclaimer

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

15. Error and Omissions

- 15.1 The Client shall inspect the Services on completion and shall within seven (7) days of such time notify the Company of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect/review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing or rectifying the Services, provided that the Client has complied with the provisions of this clause 15.1.

16. Consumer Guarantees Act 1993

- 16.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Services by the Company to the Client.

17. Intellectual Property and Confidentiality

- 17.1 If during the course of providing the Services, the Company designs, develops, discovers, or supplies the Client with any Goods, information, ideas, documentation (including designs, plans, reports, proposals, designs, programs, strategies, plans, specifications and other materials and aids, etc.), new concepts, products or processes (“Intellectual Property”) which are capable of being patented, then copyright in that Intellectual Property shall remain the property of the Company, and the Client must not reproduce, copy or use it in any manner without the prior written permission of the Company.
- 17.2 Upon completion of any agreement with the Company, the Client must return to the Company all copies of any Intellectual Property (whether in written, electronic or other form), except as otherwise agreed with the Company. No copies of such Intellectual Property are to be retained, used or passed on to any third party by the Client.
- 17.3 The Client warrants that all designs, specifications, information and instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold the Company harmless from all loss incurred or suffered by the Company arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's Intellectual Property rights by the Client during its use of the Services.
- 17.4 The Client agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Goods (or digital media thereof) which the Company has created for the Client.
- 17.5 Each party:
- (a) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
 - (b) shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of any agreement between the parties, or except where disclosure is otherwise expressly permitted by the provisions of the such agreement.

- 17.6 The Company is obliged to remain vigilant to, and to advise the Client of, any conflict of interest that may potentially impact or harm the Client. The Company shall take all necessary precautions to ensure that all Confidential Information obtained from the Client under, or in connection with, any agreement:
- (a) is given only to such of its staff and professional advisors of the Company engaged to advise it in connection with the agreement as is strictly necessary for the performance of the agreement (and only to that extent);
 - (b) is treated as confidential and not disclosed (without prior approval) or used by such staff or professional advisors or the Company otherwise than for the purposes of the agreement.
- 17.7 The provisions of clauses 17.5 and 17.6 shall not apply to any Confidential Information received by one party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
 - (b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (d) is independently developed without access to the Confidential Information; or
 - (e) which must be disclosed pursuant to a statutory, legal or Parliamentary obligation placed upon the party making the disclosure.
- 17.8 The Client:
- (a) shall immediately notify the Client of any breach of security in relation to Confidential Information and all data obtained in the performance of the agreement and will keep a record of such breaches. The Client will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Client will co-operate with the Company in any investigation that the Client considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data;
 - (b) the Client assumes liability for all loss or damage suffered by the Company as a result of breach of confidentiality undertaken by it, by itself or its employees or agents.
- 18. Default and Consequences of Default**
- 18.1 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 the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes the Company any money the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the provision of Services to the Client. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 18.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Cancellation**
- 19.1 The Company may cancel any contract to which these terms and conditions apply or cancel provision of Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice the Company shall repay to the Client any money paid by the Client for the Services. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels provision of the Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20. Privacy Act 1993**
- 20.1 The Client authorises the Company or the Company's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Company from the Client directly or obtained by the Company 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 Client.
- 20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Client shall have the right to request the Company for a copy of the information about the Client retained by the Company and the right to request the Company to correct any incorrect information about the Client held by the Company.
- 21. Unpaid Seller's Rights**
- 21.1 Where the Client has left any item/s with the Company for repair, modification, exchange or for the Company to perform any other service in relation to the item/s and the Company has not received or been tendered the whole of any moneys owing to it by the Client, the Company shall have, until all moneys owing to the Company are paid:
- (a) a lien on the item/s; and
 - (b) the right to retain or sell the item/s, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

- 21.2 The lien of the Company shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Company having been obtained against the Client.
22. **Construction Contracts Act 2002**
- 22.1 The Client hereby expressly acknowledges that:
- (a) the Company has the right to suspend the Services within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Company by a particular date; and
 - (iv) the Company has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Company suspends the Services, 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 Client or by any person claiming through the Client; 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 the Company exercises the right to suspend the Services, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Company under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Company suspending the Services under this provision.
23. **Dispute Resolution**
- 23.1 All disputes and differences between the Client and the Company 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 (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.
24. **General**
- 24.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's 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.
- 24.2 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 New Zealand.
- 24.3 The Company shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 24.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.5 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.6 The Client agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Company to provide Services to the Client.
- 24.7 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.
- 24.8 The Client 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.