

## **1. Definitions**

- 1.1. If applicable, capitalised terms have the meaning given to them in these Terms & Conditions. In addition, the following definitions apply in these Terms & Conditions:
- 1.2. "Contractor," "we" or "us" means Hanover Plumbing & Gas Limited, or any person acting on behalf of Hanover Plumbing & Gas Limited with written authority.
- 1.3. "Client," "you" or "your" means the Client or any person acting on behalf of you, including authorised representatives who are introduced to us and given authority by you.
- 1.4. "Services" means all Services provided to you, including all supply of Materials as specified in documentation or quotations attached to these Terms & Conditions or otherwise provided by us to you in accordance with this Agreement.
- 1.5. "Materials" means all Materials required to complete the Services.
- 1.6. "Price" shall mean the Price of the Services as agreed between us and you.
- 1.7. "Agreement" means the Terms & Conditions, as may be amended from time to time, including any schedules, purchases or orders (as applicable).
- 1.8. "Amounts Owning" means any amount owed by you to us, from time to time, including the Price, any interest payable by you, any of your liability under these Terms & Conditions and any enforcement expenses incurred by us in seeking payment of any Amounts Owning by you.
- 1.9. "Business Day" means Monday to Friday, excluding public holidays in New Plymouth, New Zealand.
- 1.10. "Confidential Information" means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the Terms & Conditions, the Materials and 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 which would itself be Confidential Information.
- 1.11. "Insolvency Event" means an event of insolvency, including bankruptcy; the appointment of an insolvency administrator, manager, receiver or liquidator; any action related to winding up or making a material arrangement in relation to creditors; applying for any type of protection against creditors; being unable to pay your debts as they fall due; or taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.12. "Personnel" means directors, officers, employees, agents and contractors.
- 1.13. "PPSA" means the Personal Property Securities Act 1999.
- 1.14. "Regulator" means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Materials or Services.
- 1.15. "Related Company" has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body-corporate, wherever incorporated.
- 1.16. "Security Agreement" and "Security Interest" have the meaning given to them in the PPSA.

## **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 to include that party's successors and permitted assigns and substitutes; and
  - (f) a word importing the singular includes the plural and vice versa.

## **3. Acceptance**

- 3.1. Electronic signatures shall be deemed to be accepted by both you and us, providing both parties have complied with sections 222, 224, 226 and all other relevant sections in the Contract and Commercial Law Act 2017.
- 3.2. If you place an order for or accept any provision of Services from us then you are taken to accept the Terms & Conditions and are immediately bound, jointly and severally by these Terms & Conditions.
- 3.3. These Terms & Conditions may only be amended with our written consent and shall supersede any other document or other agreement between you and us.
- 3.4. If we make a change to these Terms & Conditions, then that change will take effect from the date on which we notify you of such change.

## **4. Your Authorised Representatives**

- 4.1. Should you introduce any third party to us as your authorised representative, that representative shall have the full authority of you to order any Services, or any variation to the Services, on your behalf.
- 4.2. Such authority shall continue until all requested Services have been completed or you notify us in writing that said person is no longer your authorised representative.
- 4.3. In the event that your authorised representative is to have only limited authority to act on your behalf, then you must specifically and clearly advise in writing to us, the parameters of the limited authority granted to the authorised representative.
- 4.4. You accept that you will be solely liable for all expenses incurred in providing any Services or variations requested by your authorised representative.

## **5. Changes to Your Details**

- 5.1. You shall give us no less than fourteen (14) days written notice prior to any change in your details, including but not limited to changes in ownership of the company, name, address, contact phone, business structure or any other change to your details.
- 5.2. You shall be liable for any loss incurred by us as a result of your failure to provide the fourteen (14) days notice.
- 5.3. Should you fail to notify us of any change of details, and this failure of notice causes a registered financing statement on the Personal Property Securities Register to become inaccurate then you acknowledge and expressly agree that:
  - (a) you will be in breach of these Terms & Conditions for failing to provide fourteen (14) days written notice of any change of details in accordance with clause 5.1; and
  - (b) you shall be liable for any expense or loss of profit suffered by us as a result of failing to notify us, including any Related Company of you.

## **6. Price and Payment**

- 6.1. The Price shall be either:
  - (a) indicated in invoices provided by us to you in respect of Services provided;
  - (b) the Price as at the date of provision of the Services according to our current Price list; or
  - (c) our quoted Price which will be binding provided that you shall accept our quotation in writing within a thirty (30) day timeframe.
- 6.2. A deposit may be required at our discretion.
- 6.3. The Price will be payable by you on the date/s determined by us, which may be:
  - (a) on completion of the Services or delivery of Materials;
  - (b) due twenty (20) days following the end of the month in which a statement or invoice is sent to your address or address for notices; or
  - (c) seven (7) days following the date of any invoice given to you by us if there is no notice to the contrary from us.
- 6.4. Payment may be made by cash, electronic/on-line banking, credit card or any other method that we expressly agree to in writing.
- 6.5. All credit card payments will incur a three point two five percent (3.25%) additional charge.
- 6.6. The Price does not include GST unless otherwise stated by us in writing.

## **7. Health and Safety at Work Act 2015**

- 7.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 7.2. You must notify us of any known hazards arising from your premises to which any person may be exposed while on the premises, and ensure that your workplace is without risks to the health and safety of any person.

## **8. Variations**

- 8.1. We reserve the right to change the quoted Price in the event that:
  - (a) you request any change to plans, specifications or the Services that were originally quoted;

(b) any plans, specifications or other information supplied by you is inaccurate; or

(c) hidden or unidentifiable difficulties are discovered by us on the commencement of Services including but not limited to, prerequisite work done by a third party that is incomplete, poor weather conditions, barriers obstructing access, asbestos or other health and safety considerations.

#### **9. Consumer Guarantees Act 1993 & Fair Trading Act 1986**

- 9.1. Nothing in these Terms & Conditions will affect any rights you may have as a "consumer" (as defined under the Consumers Guarantees Act 1993 (CGA)) under the CGA.
- 9.2. For the purposes of sections 2 and 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 these Terms & Conditions); and
  - (b) it is fair and reasonable for the parties to be bound by this clause 9.2.
- 9.3. If you are acquiring the Materials or Services for the purpose of resupplying 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 own Clients; and
  - (b) procure that your Clients, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with Clients.
- 9.4. 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 this clause 9.4.
- 9.5. You will indemnify us against any liability or expenses incurred by us as a result of your breach of this clause 9.

#### **10. Delivery**

- 10.1. It is our responsibility to ensure that the Services start as soon as it is reasonably possible. The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that we claim an extension of time (by giving you written notice) where completion is delayed by any event beyond our control, including but not limited to, poor weather conditions, failure by you to make a selection or have the site ready for the provision of Services.
- 10.2. In the event that we are unable to supply the Services as agreed solely due to any action or inaction of you then we shall be entitled to charge a reasonable fee for the re-supplying of Services at a later time and date and storage of the Materials (if applicable).
- 10.3. It is expressly agreed by you that should you request us to leave Materials outside our premises for collection, or to deliver the Materials to an unattended location, those Materials shall be left unattended at your sole risk.
- 10.4. You shall authorise any deviation from the intended route or method of carriage for the Materials that may be considered reasonable or necessary to complete delivery of the Materials.
- 10.5. You agree to accept minor changes to the quantity of Materials delivered so long as the variation to the quoted amount is no more than five percent (5%). Should there be a variation to the quoted amount by no more than five percent (5%) then you agree to accept the full amount delivered and be liable for all additional expenses incurred.
- 10.6. We may deliver the Materials in separate instalments which will be invoiced and paid as individual transactions.
- 10.7. Any time specified by us for delivery of the Materials is an estimate only and we will not be liable for any loss or incurred expense by you, due to your reliance on our estimated time for delivery.

#### **11. Defects with Materials or Services**

- 11.1. You shall inspect all Materials immediately on delivery and shall notify us of any alleged defect, shortage in quantity, or damage within seven (7) days of delivery. If you do not notify us within the seven (7) day timeframe then the Materials shall be presumed to be free from any defect or damage and we will be taken to have supplied all Services and Materials free from any defect.
- 11.2. You shall not deduct from the Price, any sums owed to us by you, nor to withhold payment because part of the Services is in dispute. In the event part of the Services are in dispute, you must:
- (a) meet all of your obligations to us under these Terms & Conditions 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 to us within a seven (7) day timeframe from the installation or delivery of Services or Materials.

#### **12. Retention of Title**

- 12.1. Ownership of all Materials and Services remains with us and title does not pass to you until:
- (a) all Amounts Owing for the Materials have been cleared and received by us; and
  - (b) you have met all other obligations due by you to us in respect of these Terms & Conditions.
- 12.2. Payment to us in any other form other than cash shall not be taken to be payment until that form of payment has been cleared and honoured and until then our ownership rights shall prevail.
- 12.3. If any Materials are damaged where full payment has not been received and therefore ownership has not passed to you, then we are entitled to:
- (a) receive all insurance proceeds paid for the Materials; and
  - (b) supply these Terms & Conditions as a binding legal Agreement which is sufficient evidence for us to deal directly with the insurance company to receive all proceeds for the Materials which we legally own as per clause 12.1.
- 12.4. If any Amounts Owing are overdue or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Materials may be stored to remove any Materials. We shall not be liable in contract, tort (including negligence) or otherwise, for any expenses, losses, or damages incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal expenses on a solicitor-client basis), as a result of exercising our rights under this clause 12.4.
- 12.5. If you resell or use any Materials before ownership of the Materials has passed to you, the proceeds of such sale or use will be received and held by you (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).

#### **13. Default in Payment**

- 13.1. You must reimburse us for any expenses we incur in recovering any Amounts Owing, including any collection costs, debt collection agency fees and full legal expenses.
- 13.2. Unless waived by us in writing, may charge interest at fifteen percent (15%) on the outstanding amount from the due date of payment until the date the outstanding amount is paid.
- 13.3. We may begin proceedings to collect any invoice notwithstanding the title of Materials will not pass to you until full payment has been cleared and received by us in accordance with clause 12.
- 13.4. If an Insolvency Event occurs, all Amounts Owing will, whether or not due for payment, immediately become due and payable.

#### **14. Security and Lien**

- 14.1. Subject to us providing Materials or Services, you charge all of your rights, title and interest, whether joint or several in any asset capable of being charged with a lien, owned by you either now or in the future, to secure the performance of all obligations of you to us under these Terms & Conditions.
- 14.2. You irrevocably appoint us including 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 14 of these Terms and Conditions, including but not limited to, signing any document on your behalf.
- 14.3. You are liable for all our expenses and disbursements (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 14 to secure your obligations to us under these Terms & Conditions.
- 14.4. In accordance with section 24 of the Carriage of Goods Act 1979, we hold a lien and may sell at public auction any item or property that has been left for repair or any other Service, should you owe us any money.

#### **15. Personal Property Securities Act 1999**

- 15.1. This Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Materials and the proceeds of such Materials, to secure the payment by you to us, of all Amounts Owing.
- 15.2. A Security interest is taken in all Materials and collateral in regard to your account, which is a monetary obligation of you to us for Services previously provided and that will be provided in the future by us to you.
- 15.3. You undertake to:

- (a) promptly do all things, sign any further document and/or provide any information which we may reasonably require to ensure we are paid all sums 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 first ranking perfected Security Interest in the Materials and the proceeds of the Materials); and
  - (b) give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change in your name and/or any other changes in your details (including changes to your address, facsimile, email, trading name or business practice) as per clause 5.
- 15.4. You waive your right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.
- 15.5. To the extent permitted by law, we each contract out of:
- (a) section 114(1)(a), 133 and 134 of the PPSA; and
  - (b) your rights referred to in sections 107(2)(a), (c), (d), (h) and (i) of the PPSA.
- 15.6. You hereby waive your rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.7. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 15.8. Nothing in this Agreement is to be construed as an agreement that a Security Interest under this Agreement attaches at a later time than the time specified in section 40(1) of the PPSA.
- 15.9. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 15.10. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as Security for the Amounts Owing and we may suspend or cancel further deliveries of Materials to you until you have provided such Security Interest.
- 15.11. Any actions taken by us under clause 15 shall be unconditionally ratified by you.

## **16. Returns**

- 16.1. Any Materials will not be accepted for return unless we have agreed in writing to accept the return of Materials, on condition that:
- (a) the Materials are returned at your expense, providing you have notified and obtained our agreement within seven (7) days of receiving the Materials; and
  - (b) the Materials are returned in the condition in which they were received including all packaging.
- 16.2. We have sole discretion to accept the return of any Materials for credit and this may incur a restocking fee of twenty five percent (25%) of the value of the Materials.

## **17. Cancellation**

- 17.1. Should you cancel all or any part of any order, you shall be liable for any and all expenses incurred whether direct or indirect by us as a result of the cancellation.
- 17.2. Orders made to your specifications or non-stock-list items cannot be cancelled once production has commenced.
- 17.3. We shall be entitled to cancel all or any part of any order of yours which remains unperformed and all Amounts Owing to us shall, whether or not due, become immediately payable in the event that:
- (a) any money payable to us becomes 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/bankrupt, convene a meeting with your creditors or a receiver/liquidator or similar person is appointed in respect of you or any of your assets.
- 17.4. Cancellation or expiry of this Agreement will not affect any rights accrued prior to such cancellation or expiry.

## **18. Risk**

- 18.1. You shall ensure that we have a clear and free access to the site at all times to enable us to undertake any Services. We shall not be liable for any expense or damage to property including but not limited to pathways, driveways, concreted areas or paved areas, unless due to our negligence.
- 18.2. Where we are required to install the Materials, you warrant the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation. We shall not be liable for any claims, losses or expenses caused from the premises or equipment being unable to accommodate the installation of Materials.
- 18.3. You acknowledge that we are only responsible for Services or Materials that are provided or replaced by us. We do not at any stage accept any liability in respect of previous services carried out by any other third party that subsequently fail and are found to be the source of the failure.
- 18.4. Where you have supplied Materials for us to complete the Services, you acknowledge that you accept responsibility for the suitability of purpose, quality and any faults inherent in those Materials. However, if in our opinion, it is believed that the Materials supplied will not conform to New Zealand regulations, then we shall be entitled to halt all Services until the appropriate conforming Materials are sourced and all expenses associated with such a variation to the Services will be invoiced in accordance with clause 8.

## **19. Notification of Services**

- 19.1. You must advise and precisely locate all unseen or underground services on the site and clearly mark the same prior to us commencing any of the Services. The unseen or underground mains & services you must identify to us include, but are not limited to, electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be on site.
- 19.2. You agree to indemnify us in respect of all expenses, fines or damages as a result of services not being precisely located and notified by you as per clause 19.1.

## **20. Supplied Information**

- 20.1. Where you supply us with any design specifications such as CAD drawings or any other electronic software that provides detailed and specific information relating to dimensions or measurements, you shall be responsible for providing accurate data and we shall be entitled to rely on the accuracy of any dimensions or measurements supplied by you.
- 20.2. We shall not be liable whatsoever for any errors in Materials or additional expenses that are caused by inaccurate data being supplied by you.
- 20.3. You agree that all specifications, illustrations, dimensions and weights stated in our Price list or advertising material supplied to you, are approximate figures only and you acknowledge that these estimates should not be relied on for accuracy.
- 20.4. We are indemnified from any loss of profit or expense suffered by you, from a reliance on the approximations provided in any Price list or advertising material.

## **21. Intellectual Property and Designs**

- 21.1. We own all right, title and interest, including all intellectual property rights, in the Materials or Services at all times.
- 21.2. Any new intellectual property which is created as a result of, or in connection with, the provision of our Materials or Services will be owned by us, unless otherwise agreed in writing.
- 21.3. If, notwithstanding clause 21.1, any intellectual property rights in any of our Materials or Services vests in you, you assign those intellectual property rights to us with effect from creation, and agree to do all things reasonably required by us to give effect to such assignment.
- 21.4. You warrant that the use by us of any designs, instructions or specifications supplied to us by you will not infringe the intellectual property rights of any other person and indemnify us against any losses, damages, liabilities or expenses (including full legal expenses on a solicitor client-basis) that we may suffer or incur in the event of any such infringement.

## **22. Privacy Act 2020**

- 22.1. You authorise us and our agents to collect, use, retain and disclose personal information (as defined in the Privacy Act 2020) about you and your Personnel that you or they provide to us, in accordance with clause 22 for the following purposes:
- (a) assessing creditworthiness and exercising our rights and/or performing our obligations under this Agreement;
  - (b) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us;
  - (c) using the services of credit reporting and debt collection agencies and you consent to us disclosing personal information (including any information about default and repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
  - (d) registering any Security Interest given under this Agreement; and
  - (e) 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.
- 22.2. If you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 22.3. You (if you are an individual) and your Personnel have the right to access, and request correction of, any of your personal information held by us.
- 22.4. If you do not provide personal information requested by us, we may not be able to perform our obligations under this Agreement.
- 22.5. If the Services are expected to involve the sharing of any data sets, or other personal information, by us to you, or you to us, we will enter into a separate data protection agreement with you.
- 22.6. Clause 22 is authority and consent from you for the purposes of the Privacy Act 2020 if you are an individual.

### **23. Third Party Suppliers**

23.1. 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, these Terms & Conditions 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 any commission or other payments due to us in accordance with this Agreement.

### **24. Liability**

24.1. We shall be under no liability whatsoever to you for any indirect expense or loss of profit suffered by you arising out of a breach by us of these Terms & Conditions.

24.2. You shall not cancel any contract with us or sue for damages arising out of any unintentional misrepresentation made to you by us in regard to any Services or Materials.

24.3. Our liability shall be limited to damages which under no circumstances shall exceed the Price of the Services.

24.4. 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) supplying the Services again; or (ii) the payment of the expense of having the Services supplied again.

24.5. If, notwithstanding clause 23, 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 by you to us for the applicable Materials or Services; or (ii) the actual loss or damage suffered by you); 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.

24.6. The limitations and exclusions on liability in this clause 24 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort (including negligence) or statute.

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

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

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

(c) to any third party.

### **25. Construction Contracts Act 2002**

25.1. If you are a residential occupier (as defined under the Construction Contracts Act 2002 (CCA)), then you agree that we shall have the right to suspend any and all Services provided to you, by providing five (5) days written notice should a payment claim be served on you and the payment is defaulted.

25.2. We retain the right to suspend the Services with notice if there is no clear payment schedule supplied to us by you, detailing when payment will be cleared and received by us.

25.3. Should we suspend the Services it shall not be considered a breach of this contract and we are not liable for any loss or damage suffered by you.

25.4. We shall be entitled to an extension of time to complete any Services that remain incomplete as per this contract and you agree that:

(a) we retain the right to cancel the contract whilst the Services are suspended and all other rights available to us in this contract shall remain enforceable; and

(b) we may exercise any rights under the CCA, including any rights we have under section 345(1)(d) of the Contract and Commercial Law Act 2017 for contractual remedies.

### **26. Repair and Installation of Pipes**

26.1. You agree that the presence of blockages or tree root growth may indicate damaged pipe/s and where we are requested to clear such blockages we can offer no guarantee against reoccurrence or further damage. Should the pipe/s collapse during the process of clearing the blockage, then we shall provide you with an estimate for the full repair of the damage, which will be treated as a variation as per clause 8.

26.2. The installation of new pipework or components can cause existing pipework to fail or become damaged. You agree to indemnify us from all liability should the existing pipework fail or become damaged due to the installation of any new pipework or components.

### **27. General**

27.1. 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 the courts of New Zealand.

27.2. Entire Agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.

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

(a) these Terms & Conditions;

(b) all other schedules to this Agreement;

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

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

27.4. Sub-contracting: We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.

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

27.6. 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.

27.7. 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 address of the relevant party (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.

27.8. 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.

27.9. Severability: If any part of this Agreement is illegal or unenforceable, it will be severed and the remaining Terms & Conditions will continue in full force and effect.

27.10. 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.

27.11. Survival: Any provision of this Agreement, which is by its nature a continuing obligation, will survive termination.

27.12. Rights of Third Parties: This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.

27.13. Relationship: We will provide Materials or Services to you as an independent Contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.

27.14. Non-exclusive: This Agreement is not exclusive and you agree that there are no restrictions on us to provide any Materials or Services to any other person.

27.15. Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or by email exchange of pdf copies) which together will constitute the one instrument.