
Thames Drainage & Digging Co Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “**TDD**” means Thames Drainage & Digging Co Ltd, its successors and assigns or any person acting on behalf of and with the authority of Thames Drainage & Digging Co Ltd.
- 1.3 “**Customer**” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting TDD to provide the Services (and/or Equipment on hire) as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “**Goods**” means all Goods or Services supplied by TDD to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “**Equipment**” means all Equipment including any accessories supplied on hire by TDD 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 TDD to the Customer.
- 1.6 “**Confidential Information**” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using TDD’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.8 “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods/Equipment hire as agreed between TDD and the Customer in accordance with clause 6 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 the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with TDD and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, TDD reserves the right to refuse Delivery.
- 2.6 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. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that TDD shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by TDD in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TDD in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of TDD; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to TDD as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any materials or Services on the Customer’s behalf and/or to request any variation to the Services on the Customer’s behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies TDD in writing that said person is no longer the Customer’s duly authorised representative).
- 4.2 In the event that the Customer’s duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise TDD in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to TDD for all additional costs incurred by TDD (including TDD’s profit margin) in providing any Equipment, Goods, Services or variation/s requested by the Customer’s duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

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5.1 The Customer shall give TDD 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, change of trustees or business practice). The Customer shall be liable for any loss incurred by TDD as a result of the Customer's failure to comply with this clause.

6. Price and Payment

6.1 At TDD's sole discretion the Price shall be TDD's quoted price which:

- (a) shall only cover the scope agreed to by both parties with any changes being a variation as per clause 6.2; and
- (b) will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2 TDD reserves the right to change the Price if a variation to TDD's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, hard rock barriers below the surface or iron reinforcing rods in concrete, other latent soil conditions, limitations to accessing the site, prerequisite work by any third party not being completed or as a result of any increase to TDD's in the cost of materials and labour) will be charged for on the basis of TDD's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by TDD within ten (10) working days. Failure to do so will entitle TDD to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.

6.3 At TDD's sole discretion a deposit may be required.

6.4 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, TDD reserves the right to treat all retentions as placing the Customer's account into default.

6.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by TDD, which may be:

- (a) on delivery of the Goods/Equipment;
- (b) 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;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by TDD.

6.6 Payment may be made by cash, cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and TDD.

6.7 TDD may in its discretion allocate any payment received from the Customer towards any invoice that TDD determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer TDD may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TDD, payment will be deemed to be allocated in such manner as preserves the maximum value of TDD's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.

6.8 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 TDD nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to TDD an amount equal to any GST TDD must pay for any supply by TDD under this or any other Contract for the sale of the Goods/hire of the Equipment. 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 any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods/Equipment

7.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that TDD (or TDD's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.

7.2 At TDD's sole discretion the cost of delivery is included in the Price.

7.3 TDD may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.4 Any time specified by TDD for delivery of the Goods/Equipment is an estimate only and TDD will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that TDD is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then TDD shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, TDD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by TDD is sufficient evidence of TDD's rights to receive the insurance proceeds without the need for any person dealing with TDD to make further enquiries.

8.3 If the Customer requests TDD to leave Goods outside TDD's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

8.4 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where TDD is requested to merely clear such blockages, TDD can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, TDD will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.

8.5 In the event that during the course of the works TDD discovers any fossils, artefacts or any other remains of geological or archaeological interest then TDD reserves the right to halt all works and immediately notify the Customer. The Customer accepts and agrees that all

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additional costs that may be incurred by TDD as a result of any such delays shall be borne by the Customer and shall be treated as a variation in accordance with clause 6.2 above

- 8.6 In the event that during the course of the works TDD discovers any undisclosed waste and/or hazardous materials then TDD reserves the right to halt all works and immediately notify the Customer. It shall be the responsibility of the Customer to arrange the removal of all such materials. In the event that TDD agrees to remove such materials for the Customer then this shall be treated as a variation in accordance with clause 6.2 and shall be in addition to the Price. TDD under no circumstances shall undertake the removal of asbestos.

9. Access

- 9.1 The Customer shall ensure that TDD has clear and free access to the work site at all times to enable them to undertake the works. TDD 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 TDD.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify TDD against all costs incurred by TDD in recovering such vehicles in the event they become bogged or otherwise immovable.

10. Underground Locations

- 10.1 Prior to TDD commencing any work the Customer must advise TDD of the precise location of all underground services on the site and clearly mark the same. The underground mains and 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.
- 10.2 Whilst TDD will take all care to avoid damage to any underground services the Customer agrees to indemnify TDD 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 10.1.

11. Insurance

- 11.1 TDD shall have public liability insurance of at least two million dollars (\$2m). It is the Customer's responsibility to ensure that they are similarly insured.

12. Title To Goods

- 12.1 TDD and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid TDD all amounts owing to TDD; and
 - (b) the Customer has met all of its other obligations to TDD.
- 12.2 Receipt by TDD 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Goods and must return the Goods to TDD on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for TDD and must pay to TDD the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for TDD and must pay or deliver the proceeds to TDD on demand.
 - (d) the Customer should not convert or process the Goods 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 TDD and must sell, dispose of or return the resulting product to TDD as it so directs.
 - (e) the Customer irrevocably authorises TDD to enter any premises where TDD believes the Goods are kept and recover possession of the Goods.
 - (f) TDD may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer 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 TDD.
 - (h) TDD may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

13. Personal Property Securities Act 1999 ("PPSA")

- 13.1 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 Goods/Equipment previously supplied by TDD to the Customer (if any) and all Goods/Equipment that will be supplied in the future by TDD to the Customer.
- 13.2 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 TDD may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, TDD for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of TDD; and
 - (d) immediately advise TDD of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

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- 13.3 TDD and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by TDD, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by TDD under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.

14. Defects

- 14.1 The Customer shall inspect the Goods/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify TDD of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford TDD an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which TDD has agreed in writing that the Customer is entitled to reject, TDD's liability is limited to either (at TDD's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 14.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 14.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).

15. Returns Of Goods

- 15.1 TDD will not accept the return of Goods for credit.
- 15.2 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

16. Warranty

- 16.1 For Goods not manufactured by TDD, the warranty shall be the current warranty provided by the manufacturer of the Goods. TDD 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 Goods.

17. Consumer Guarantees Act 1993

- 17.1 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 ("CGA") do not apply to the supply of Goods by TDD to the Customer.

18. Intellectual Property

- 18.1 Where TDD has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of TDD. Under no circumstances may such designs, drawings and documents be used without the express written approval of TDD.
- 18.2 The Customer warrants that all designs, specifications or instructions given to TDD will not cause TDD to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify TDD against any action taken by a third party against TDD in respect of any such infringement.
- 18.3 The Customer agrees that TDD may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which TDD has created for the Customer.

19. Default and Consequences of Default

- 19.1 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 TDD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes TDD any money the Customer shall indemnify TDD from and against all costs and disbursements incurred by TDD in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, TDD's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies TDD may have under this Contract, if a Customer has made payment to TDD, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TDD under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to TDD's other remedies at law TDD shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to TDD shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TDD becomes overdue, or in TDD's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by TDD;
 - (c) the Customer 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. Cancellation

- 20.1 Without prejudice to any other remedies TDD may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions TDD may suspend or terminate the supply of Goods/Equipment to the Customer. TDD will not be liable to the Customer for any loss or damage the Customer suffers because TDD has exercised its rights under this clause.
- 20.2 TDD may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice TDD shall repay to the Customer any money paid by the Customer for the Goods/Equipment. TDD shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 Cancellation of orders for Goods 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 Policy

- 21.1 All emails, documents, images or other recorded information held or used by TDD is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. TDD acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TDD acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by TDD that may result in serious harm to the Customer, TDD will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to TDD in respect of Cookies where the Customer utilises TDD's website to make enquiries. TDD agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to TDD when TDD sends an email to the Customer, so TDD may collect and review that information ("collectively Personal Information")

If the Customer consents to TDD's use of Cookies on TDD's website and later wishes to withdraw that consent, the Customer may manage and control TDD's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 21.3 The Customer authorises TDD or TDD's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or 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 TDD from the Customer directly or obtained by TDD 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.

21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.

21.5 The Customer shall have the right to request (by e-mail) from TDD, a copy of the Personal Information about the Customer retained by TDD and the right to request that TDD correct any incorrect Personal Information.

21.6 TDD will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

21.7 The Customer can make a privacy complaint by contacting TDD via e-mail. TDD will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

22. Equipment Hire

22.1 Equipment shall at all times remain the property of TDD and is returnable on demand by TDD. In the event that Equipment is not returned to TDD in the condition in which it was delivered TDD retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all TDD shall have right to charge the Customer the full cost of replacing the Equipment.

22.2 The Customer 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 TDD to the Customer.

22.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, TDD's interest in the Equipment and agrees to indemnify TDD 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 Liability Insurance covering any loss, damage or injury to

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property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

23. Dispute Resolution

23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

24. Compliance with Laws

24.1 The Customer and TDD 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.

24.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

24.3 The Customer agrees that the worksite will comply with any WorkSafe guidelines and Health and Safety at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.

25. Suspension of Services

25.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:

- (a) TDD 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 in accordance with clause 6.5 and/or any subsequent amendments or new legislation 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 TDD by a particular date; and
 - (iv) TDD has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if TDD 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 TDD exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to TDD under the Contract and Commercial Law Act 2017; 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 TDD suspending work under this provision;
- (d) due to any act or omission by the Customer, the Customer effectively precludes TDD from continuing the Services or performing or complying with TDD's obligations under this Contract, then without prejudice to TDD's other rights and remedies, TDD may suspend the Services immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by TDD as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.

25.2 If pursuant to any right conferred by this Contract, TDD suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, TDD shall be entitled to terminate the Contract, in accordance with clause 20.

26. Service of Notices

26.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

26.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

27. Trusts

27.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not TDD may have notice of the Trust, the Customer covenants with TDD as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

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- (c) the Customer will not without consent in writing of TDD (TDD will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

28. General

- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 28.2 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 Thames in New Zealand.
- 28.3 TDD 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 TDD of these terms and conditions (alternatively TDD's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 28.4 TDD may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 28.5 The Customer cannot licence or assign without the written approval of TDD.
- 28.6 TDD may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of TDD's sub-contractors without the authority of TDD.
- 28.7 The Customer agrees that TDD may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for TDD to provide Services to the Customer.
- 28.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 28.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.