

PAYMENT TERMS AND CONDITIONS

1. Definitions

- 1.1 “Company” shall mean Utilise Phil Limited T/A Utilise Phil its successors and assigns or any person acting on behalf of and with the authority of Utilise Phil Limited T/A Utilise Phil.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Company to the Client.
- 1.3 “Guarantor” shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by the Company to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Company to the Client.
- 1.5 “Services” shall mean all services supplied by the Company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the price payable for the Goods as agreed between the Company and the Client in accordance with clause 3 of this contract.

2. Price, Payment and Late Payment

- 2.1 At the Company’s sole discretion, the Price shall be either:
 - (a) the Company’s current price at the date of delivery of the Goods according to the Company’s current Price list; or
 - (b) the Company’s quoted Price (subject to clause 4.2) which shall be binding upon the Company provided that the Client shall accept the Company’s quotation in writing within thirty (30) days.
- 2.2 The Company reserves the right to change the Price in the event of a variation to the Company’s quotation. Any variation from the Company’s quoted Price will be detailed in writing and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 2.3 At the Company’s sole discretion, a deposit may be required.
- 2.4 At the Company’s sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods.
- 2.5 Payment is due seven (7) days from date of Invoice, unless otherwise stated.
- 2.6 The Price (unless otherwise stated in writing) does not include the costs of supply or installation of any electrical and/or building and landscaping materials or any other ancillary

equipment that may be required to complete the work that was outside of the initial scope of work.

- 2.7 In the event that any hire machinery is needed to install the Goods, any costs associated with the hireage or supply of such equipment shall be in addition to the Company's quoted Price.
- 2.8 Removal of any existing machinery or fixtures necessary to install the Goods is in addition to the Company's quoted Price.
- 2.9 Payment will be made by cash, or by bank cheque, or by direct credit, or by credit card or by any other method as agreed to between the Client and the Company.
- 2.10 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 2.11 Credit Card Surcharge fee 3.30% is payable on Invoice total amount owing. The fee will be added at time of payment.
- 2.12 Late payment shall incur interest at the rate of 10% per annum calculated on a daily basis. This shall be payable on any monies outstanding under these terms and conditions from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Client's default in failing to make payment on the due date.
- 2.13 If any account remains overdue after thirty (30) days then an amount of the greater of fifty dollars (\$50.00) or ten percent (10%) of the amount overdue (up to a maximum of three hundred and fifty dollars (\$350.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 2.13 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); the Company may suspend or terminate the supply of Goods and/or services to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause.
- 2.14 **In the event that:**
 - 2.14.1 any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
 - 2.14.2 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
 - 2.14.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; then without prejudice to the Company's other remedies at law
 - 2.14.4 the Company shall be entitled to terminate all or any part of any Goods/Service that they provided to the Client that remains unperformed in addition to and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable, inclusive of any termination fees, and the company shall pass on all additional fees relating to recovering the rest to the Client.

- 2.15 Any expenses, disbursements and /or legal costs incurred by the Company in the enforcement of any rights contained in this agreement shall be paid by the Client, including any reasonable Solicitors fees and/or debt collection agency fees and costs.
- 2.16 Payment allocation: The Company at its discretion shall allocate payments received from the Client towards any invoice the Company determines and may do so at any time of receipt or at any time afterwards and/or upon default by the Client may reallocate any or all payments previously received and allocated. In the absence of any payment allocation by the Company payment shall be deemed to be allocated in such manner as preserves the maximum value of the Companies purchase money security interest in the Goods.

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

- 16.1 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) will be supplied in the future by the Company to the Client.
- 16.2 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 Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Company; and
 - (d) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.3 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.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.5 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.
- 16.6 The Client shall unconditionally ratify any actions taken by the Company under clauses 16.1 to 16.5 in the Terms of Trade.

17. Governing Laws

- 17.1 These Payment Terms and Conditions (PTAC) will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the products and/or services or these PTAC.

18. Dispute Resolution

- 20.1 The Company will endeavour to resolve any dispute between the Client and itself without the need for Court proceedings. Any such attempt is without legal prejudice.
- 20.2 The Company reserves the right to go to the Disputes Tribunal if no resolution can be reached between the parties.

19. General

- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 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.
- 19.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other events beyond the reasonable control of either party.
- 19.9 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.