

**1. Definitions**

- 1.1 “JLPL” means JLP Commercial Limited, its successors and assigns or any person acting on behalf of and with the authority of JLP Commercial Limited.
- 1.2 “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by JLPL to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Works as agreed between JLPL and the Customer in accordance with clause 4 below.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with JLPL’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and JLPL.

**3. Change in Control**

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

**4. Price and Payment**

- 4.1 At JLPL’s sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by JLPL to the Customer in respect of Works performed or Materials supplied; or
  - (b) JLPL’s quoted Price (subject to clause 4.2) which shall be binding upon JLPL provided that the Customer shall accept JLPL’s quotation in writing within thirty (30) days.
- 4.2 JLPL reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to JLPL in the cost of labour or materials which are beyond JLPL’s control.
- 4.3 At JLPL’s sole discretion a deposit may be required.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by JLPL, which may be:
  - (a) Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by JLPL.
- 4.5 Payment may be made by cheque, electronic/on-line banking or by any other method as agreed to between the Customer and JLPL.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to JLPL an amount equal to any GST JLPL must pay for any supply by JLPL under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**5. Delivery of the Works**

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

**6. Access**

- 6.1 The Customer shall ensure that JLPL has clear and free access to the work site at all times to enable them to undertake the Works. JLPL 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 JLPL.

**7. Underground Locations**

- 7.1 Prior to JLPL commencing any Work the Customer must advise JLPL of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst JLPL will take all care to avoid damage to any underground services the Customer agrees to indemnify JLPL 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 7.1.

**8. Risk**

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- 8.1 If JLPL retains ownership of the Materials under clause 9 then;
- (a) where JLPL is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
    - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at JLPL's address; or
    - (ii) the Materials are delivered by JLPL or JLPL's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
  - (b) where JLPL is to both supply and install Materials then JLPL shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests JLPL to leave Materials outside JLPL's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 8.3 The Customer acknowledges and agrees that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Accordingly the Customer agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.
- 9. Title**
- 9.1 JLPL and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid JLPL all amounts owing to JLPL; and
  - (b) the Customer has met all of its other obligations to JLPL.
- 9.2 Receipt by JLPL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to JLPL on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for JLPL and must pay to JLPL the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
  - (c) the production of these terms and conditions by JLPL shall be sufficient evidence of JLPL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with JLPL to make further enquiries.
  - (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for JLPL and must pay or deliver the proceeds to JLPL on demand.
  - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of JLPL and must sell, dispose of or return the resulting product to JLPL as it so directs.
  - (f) unless the Materials have become fixtures the Customer irrevocably authorises JLPL to enter any premises where JLPL believes the Materials are kept and recover possession of the Materials.
  - (g) JLPL may recover possession of any Materials in transit whether or not delivery has occurred.
  - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of JLPL.
  - (i) JLPL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
- 10. Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials previously supplied by JLPL to the Customer (if any) and all Materials that will be supplied in the future by JLPL to the Customer.
- 10.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which JLPL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, JLPL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of JLPL; and
  - (d) immediately advise JLPL of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 10.3 JLPL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by JLPL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Customer shall unconditionally ratify any actions taken by JLPL under clauses 10.1 to 10.5.
- 11. Security and Charge**

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- 11.1 In consideration of JLPL agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies JLPL from and against all JLPL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising JLPL's rights under this clause.
- 11.3 The Customer irrevocably appoints JLPL and each director of JLPL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12. Customer's Disclaimer**
- 12.1 The Customer hereby disclaims any right to rescind, or cancel any contract with JLPL or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by JLPL and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgment.
- 13. Defects In Materials**
- 13.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify JLPL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford JLPL an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which JLPL has agreed in writing that the Customer is entitled to reject, JLPL's liability is limited to either (at JLPL's discretion) replacing the Materials or repairing the Materials.
- 14. Returns**
- 14.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 13.1; and
  - (b) JLPL has agreed in writing to accept the return of the Materials; and
  - (c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (d) JLPL will not be liable for Materials which have not been stored or used in a proper manner; and
  - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.2 JLPL may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.
- 14.3 Non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 15. Warranties**
- 15.1 Subject to the conditions of warranty set out in clause 15.2 JLPL warrants that if any defect in any workmanship of JLPL becomes apparent and is reported to JLPL within thirty (30) days of the date of delivery (time being of the essence) then JLPL will either (at JLPL's sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Materials; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by JLPL; or
    - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and JLPL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without JLPL's consent.
  - (c) in respect of all claims JLPL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.3 For Materials not manufactured by JLPL, the warranty shall be the current warranty provided by the manufacturer of the Materials. JLPL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
- 16. Intellectual Property**
- 16.1 Where JLPL has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in JLPL, and shall only be used by the Customer at JLPL's discretion.
- 17. Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at JLPL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes JLPL any money the Customer shall indemnify JLPL from and against all costs and disbursements incurred by JLPL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, JLPL's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies JLPL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions JLPL may suspend or terminate the supply of Works to the Customer. JLPL will not be liable to the Customer for any loss or damage the Customer suffers because JLPL has exercised its rights under this clause.
- 17.4 Without prejudice to JLPL's other remedies at law JLPL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to JLPL shall, whether or not due for payment, become immediately payable if:

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- (a) any money payable to JLPL becomes overdue, or in JLPL's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 18. Cancellation

- 18.1 JLPL may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice JLPL shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to JLPL for Works already performed. JLPL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by JLPL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 19. Privacy Act 1993

- 19.1 The Customer authorises JLPL to:
  - (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
  - (b) disclose information about the Customer, whether collected by JLPL from the Customer directly or obtained by JLPL 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.
- 19.2 Where the Customer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Customer shall have the right to request JLPL for a copy of the information about the Customer retained by JLPL and the right to request JLPL to correct any incorrect information about the Customer held by JLPL.

### 20. Dispute Resolution

- 20.1 All disputes and differences between the Customer and JLPL 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.

### 21. Construction Contract Act 2002

- 21.1 The Customer hereby expressly acknowledges that:
  - (a) JLPL has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to JLPL by a particular date; and
    - (iv) JLPL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if JLPL 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 JLPL exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to JLPL under the Contractual Remedies Act 1979; or
    - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of JLPL suspending work under this provision.

### 22. General

- 22.1 The failure by JLPL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect JLPL'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.
- 22.2 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 Wellington.
- 22.3 JLPL 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 JLPL of these terms and conditions (alternatively JLPL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 22.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by JLPL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 JLPL may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

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- 22.6 The Customer agrees that JLPL may amend these terms and conditions at any time. If JLPL makes a change to these terms and conditions, then that change will take effect from the date on which JLPL notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for JLPL to provide any Works to the Customer.
- 22.7 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.
- 22.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.