

General Terms of Supply

1 Overview

- 1.1 These General Terms apply wherever they are incorporated into an agreement under which Northpower agrees to supply services to a customer (**Agreement**).
- 1.2 Some parts of these General Terms apply only where the Agreement is a Larger Trade Contract. Other parts of these General Terms apply only where the Agreement is a Consumer or Small Business Contract.
- 1.3 Take a look at the Glossary in clause 15, defining various words and phrases that have special meanings when used in these General Terms or other parts of the Agreement.

2 Services

- 2.1 Northpower will provide the Services to the Customer on the terms of the Agreement.
- 2.2 In carrying out its activities in connection with the Agreement, Northpower will exercise reasonable skill, care and diligence, and comply with all laws as they apply to Northpower in relation to those activities.
- 2.3 Where the Services require Northpower to attend a site controlled by the Customer, Northpower will comply with all reasonable safety and security arrangements for that site as advised by the Customer to Northpower on reasonable notice from time to time.
- 2.4 Northpower may subcontract any part of the Services, but will be responsible under the Agreement for its subcontractors' acts and omissions in connection with the Services.
- 2.5 Northpower will ensure its personnel have appropriate skills and qualifications to perform their roles in the provision of the Services.

3 Customer obligations

- 3.1 The Customer must provide Northpower with unobstructed access to the Site as needed to carry out the Services, if applicable.
- 3.2 The Customer must obtain and pay for all consents, certificates, approvals, authorities, licences and permits that are needed to access the Site and/or lawfully carry out the Services, except for those that the parties have specifically agreed are to be obtained by Northpower.
- 3.3 The Customer must provide at its own cost any personnel, facilities or equipment that the parties have agreed are required from the Customer to enable the Services.
- 3.4 The Customer must provide at its own cost all information that it holds or controls, as reasonably requested by Northpower for the purposes of the Services, including all as-built plans, manuals, specifications and drawings relevant to the Services.
- 3.5 The Customer must provide all co-operation reasonably requested by Northpower from time to time for the purpose of enabling Northpower to provide the Services.
- 3.6 The Customer must promptly notify Northpower if the Customer becomes aware of anything it could reasonably expect to materially affect the scope, cost or timing of the Services.
- 3.7 The Customer must promptly provide any direction or decision reasonably requested by Northpower in relation to the provision of the Services.
- 3.8 All risk of damage to, or loss or theft of, any Materials passes to the Customer at the time of delivery to the Site. The Customer must insure all Materials for their full replacement value from the time of delivery to the Site.
- 3.9 Northpower will not be liable to the Customer for any loss, delay, failure or defect arising from any aspect of a design, other than a design created solely by Northpower.

4 Charges

- 4.1 The Customer will pay the Charges in accordance with the terms of the Agreement.

4.2 Where the Agreement provides an estimate of the Charges, Northpower will not exceed that estimate by more than 10% without the Customer's approval. If it becomes apparent that completing the Services would result in the estimate being exceeded by more than 10%, Northpower will promptly notify the Customer and provide a revised cost estimate, and until that revised estimate is approved, Northpower will not be obliged to carry out any work that would result in the existing estimate being exceeded by more than 10%.

4.3 Northpower may increase its rates and prices under the Agreement no more than once every 12 months, although no increase will be made during the first 12 months following the date of the Agreement. Northpower will notify the Customer of each increase at least 40 Business Days in advance. The Customer may reject the increase by notifying Northpower within 10 Business Days of receiving Northpower's notice, in which case Northpower may terminate the Agreement by giving at least 10 Business Days' notice to the Customer. Otherwise, the increase will take effect as notified by Northpower.

4.4 All amounts set out in or quoted under the Agreement are stated before the addition of GST. Where GST is payable on a supply made under the Agreement, Northpower may charge that GST to the Customer, and the Customer will pay the GST amount in addition to the consideration for that supply, subject to receipt of a valid tax invoice.

5 Payment

- 5.1 Unless stated otherwise in the Agreement, Northpower will invoice the Customer at the end of each month for Services provided during that month. At Northpower's option, the invoice may serve as a payment claim under the Construction Contracts Act 2002, so long as it complies with the requirements of the Act regarding the form and content of payment claims.
- 5.2 The Customer will pay each invoice by its due date, without set-off or deduction. Each invoice is due on the 20th of the month after the month in which the invoice is issued, or if that is not a Business Day, then the next Business Day.
- 5.3 If the Customer fails to pay amounts owing under the Agreement by the due date, Northpower may charge interest on the overdue amounts. Interest will accumulate daily and compound monthly, at a rate of five percentage points above the Average 3 Month Bank Bill Reference Rate for the relevant day, as published by the NZ Financial Markets Association.
- 5.4 The Customer will pay any costs and expenses incurred by Northpower in recovering any amounts owing under the Agreement, including legal fees, court costs, reasonable charges for administrative time spent attending to any debt collection, and debt collection agency costs.
- 5.5 Northpower may set off any amount owed to it by the Customer against any amount owed by Northpower to the Customer, including all or part of any credit balance held by Northpower.

6 Variations

- 6.1 Either party may request a Variation by submitting a written request to the other party specifically marked as a request for a Variation (**Variation Request**).
- 6.2 For each Variation Request, Northpower will assess the likely impact of the Variation on the scope and timeframes for the Services, and the amounts to be charged to the Customer under the Agreement (**Impact Assessment**). Where Northpower submits a Variation Request, Northpower will provide an Impact Assessment to the Customer at the same time as the Variation Request. Where the Customer submits a Variation Request, Northpower will provide an Impact Assessment to the Customer within a reasonable time of receiving the Variation Request, generally 10 Business Days unless more time is reasonably required.
- 6.3 Where the impact of the Variation depends on one or more factors that Northpower cannot reasonably predict or control, Northpower may include in the Impact Assessment a rate, formula or other mechanism to account for variance in those factors. Alternatively, Northpower may include one or more

assumptions to account for those factors, on the basis that any variance from those assumptions will be treated as a Variation Event.

6.4 The Customer is free to decline any Variation Request from Northpower, except that the Customer will not refuse a Variation Request where the Agreement specifically provides that Northpower is entitled to a Variation, so long as the Variation has been determined by Northpower acting reasonably and in accordance with the terms of the Agreement.

6.5 Northpower will not unreasonably refuse any Variation Request from the Customer, including by demanding any unreasonable charges or terms. It is not unreasonable for Northpower to refuse a Variation Request that would significantly increase the risks borne by Northpower in relation to the Services, require Northpower to incur additional costs without corresponding compensation from the Customer, or fundamentally alter the scope or nature of the Services.

6.6 Once both parties have approved a Variation Request and the associated Impact Assessment, the Agreement will be taken to have been amended accordingly.

6.7 Each party will bear its own costs in preparing and dealing with Variation Requests.

7 Variation Events

7.1 Northpower is not liable for any failure or delay to the extent due to a Variation Event.

7.2 Northpower will be entitled to a Variation to offset or compensate Northpower for the impact of each Variation Event on the time, cost and effort required to complete the Services.

7.3 The Variation may take the form of an extension of time, additional payment, an adjustment to the scope of or requirements for the Services, or a combination of the foregoing. Subject to the requirements of clause 7.1, Northpower will use reasonable endeavours to accommodate the Customer's preference as to the form of Variation.

7.4 Northpower will notify the Customer of any Variation Event as soon as reasonably practicable if Northpower has reason to believe that it may have an impact on the Services.

8 Indemnity from the Customer

8.1 The Customer will indemnify and hold Northpower harmless against all liability Northpower may have for any claim by a third party, or any action by a regulator or enforcement agency, together with all costs and expenses reasonably incurred by the Northpower in responding to, defending or settling such a claim or action, to the extent the claim or action concerns:

- (a) Northpower inadvertently contravening any law or infringing any property rights, as a result of the Customer failing to obtain a consent, certificate, approval, authority, licence or permit required under clause 3.1;
- (b) Northpower inadvertently damaging any underground services (e.g. cables, ducts or pipes), as a result of relying on any inaccurate, misleading or incomplete information provided by or on behalf of the Customer in connection with the Agreement; and/or
- (c) any damage caused to a third party through vibration, weakening or removal of support, that in each case is the unavoidable result of carrying out the Works or remedying defects in the Works in accordance with the Agreement.

8.2 Northpower will take reasonable steps to mitigate its liability for any such claim or action, and the Customer will not be liable under this indemnity to the extent that the amounts claimed by Northpower are due to Northpower's negligent mismanagement of the claim or action, or due to Northpower agreeing to a settlement that is manifestly excessive when considered in light of the merits of the claim or action, the likely cost of defending the claim or action, and any other relevant circumstances.

9 Liability

9.1 The Customer may have rights under the Fair Trading Act and/or the Consumer Guarantees Act. If the Agreement is a Consumer or Small Business Contract, nothing in this clause 9 takes away

from those rights where applicable. You can find out more [here](#)¹ and [here](#).²

9.2 If the Agreement is a Larger Trade Contract, then as far as permitted by law, the parties contract out of the Consumer Guarantees Act 1993 and sections 9, 12A, and 13 of the Fair Trading Act 1986, in relation to the Services and all related activities.

9.3 As far as permitted by law, Northpower excludes all implied warranties relating to the Services and/or Materials, including any warranties as to fitness for purpose or merchantable quality.

9.4 Neither party will be liable to the other under or in connection with the Agreement for any loss of profit, revenue, contract or anticipated savings, any loss of use or production, any loss arising from any production stoppage or business interruption, any costs of procuring an alternative energy supply, any loss or corruption of data, any loss of goodwill or asset value, any special damages, or any indirect or consequential loss.

9.5 Northpower will not be liable to the Customer under or in connection with the Agreement for any contractual liability assumed by the Customer to a third party.

9.6 The total liability of Northpower to the Customer under or in connection with the Agreement will not exceed the greater of any "Starting Liability Cap" specified in the Contract Details, and the total of all Charges paid to Northpower under the Agreement.

9.7 The total liability of the Customer to Northpower under or in connection with the Agreement will not exceed the total of all Charges paid to Northpower under the Agreement.

9.8 Northpower will not be liable for more than Northpower's proportionate share of any loss, cost or damage, taking into account any contribution by the Customer or a third party.

9.9 Neither party will be liable to the other for any cause of action arising from an act or omission made in connection with the Services, unless the other party brings proceedings to enforce that cause of action within three years of the act or omission being made.

9.10 The following liabilities will not be limited by or counted against the limitations, or excluded by the exclusions, in this clause 9:

- (a) any liability that cannot lawfully be limited or excluded by contract;
- (b) any liability either party may have for death or personal injury caused by its negligence;
- (c) any liability either party may have for fraud, deceit, or breach of confidentiality;
- (d) any statutory liability either party may have for intellectual property infringement;
- (e) any fees, charges, liquidated damages or other amounts that the Agreement expressly requires one party to pay to the other; or
- (f) any liability the Customer may have under clause 8.

9.11 Subject to clause 9.10, the limitations and exclusions in this clause 9 apply to all liability arising under or in connection with the Agreement, whether in contract, tort (including negligence), equity or under any other law or legal theory.

10 Extraordinary Events

10.1 A party will be excused any failure or delay in performing its obligations under the Agreement to the extent that the failure or delay is caused by Extraordinary Events. This does not excuse any failure to pay an amount owing under the Agreement.

10.2 A party claiming relief for Extraordinary Events under the Agreement (**Affected Party**) must notify the other party as soon as reasonably practicable on becoming aware of the Extraordinary Events.

10.3 The Affected Party must take all reasonable steps to mitigate the impact of the Extraordinary Events on its performance, and to resume performance as soon as reasonably practicable. To avoid doubt, this will not require the Affected Party to settle any industrial dispute.

¹ <https://www.consumer.org.nz/articles/fair-trading-act>

² <https://www.consumer.org.nz/articles/consumer-guarantees-act>

- 10.4 The Affected Party must keep the other party informed of the impact of the Extraordinary Events on the Affected Party's performance, and the steps underway to mitigate that impact.
- 10.5 If Extraordinary Events cause a delay to any material component of the Services greater than 40 Business Days, either party may terminate the Agreement by giving notice to the other.
- 10.6 If Extraordinary Events impede Northpower in performing the Services, Northpower will be entitled to a Variation extending the timeframes for performance of the Services to accommodate the resulting delay. Northpower is not entitled to payment of additional costs for a Variation claimed under this clause 10.6, although this does not prevent Northpower from claiming additional costs for the underlying events to the extent they also qualify as a Variation Event independently of this clause 10.6.

11 Termination

- 11.1 The Customer can terminate this Agreement at any time for convenience, by giving Northpower at least 30 days' notice.
- 11.2 Either party may terminate the Agreement at any time by giving notice to the other party, if the other party commits a material breach of the Agreement that remains unremedied at the end of 10 Business Days after the first party gives notice identifying the breach, demanding a remedy, and warning that termination may follow if the breach is not remedied.
- 11.3 Either party may terminate the Agreement at any time by giving notice to the other party, if the other party undergoes an Insolvency Event.
- 11.4 Northpower may terminate the Agreement at any time by giving notice to the Customer if the Customer is overdue in paying amounts owing under the Agreement and has not paid all outstanding amounts within 20 Business Days of receiving a warning notice from Northpower.
- 11.5 On termination of the Agreement, Northpower may invoice the Customer for all Services supplied but not yet invoiced. If Northpower terminates the Agreement for the Customer's breach or an Insolvency Event, all amounts owing to Northpower will be due immediately.
- 11.6 On termination or expiry of the Agreement, if requested, each party will promptly return to the other all documents, materials and other items belonging to the other party that are then in the possession or control of the first party.
- 11.7 Termination or expiry will not affect any rights or liabilities already accrued up to that time.
- 11.8 Clauses 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 will survive termination or expiry, along with any other provisions of the Agreement clearly intended to survive.

12 Charges for early termination

- 12.1 If the Customer terminates this Agreement under clause 11.1, or Northpower terminates this Agreement under any provision that requires Northpower to have a reason for termination, then promptly following the effective date of termination, the Customer will pay Northpower an early termination charge in accordance with this clause 12 (**Early Termination Charge**).

- 12.2 Subject to the other provisions of this clause 12, the Early Termination Charge will be:
- the amount of any unrecoverable costs reasonably incurred or committed by Northpower in the expectation of completing the Services; plus
 - a percentage (determined in line with the table below) of any remaining portion of the Quoted Price that Northpower had not already become entitled to invoice under any other provision of the Agreement before the effective date of termination.

<i>Time from notice of termination to effective date of termination</i>	<i>Percentage</i>
40 Business Days or more	Nil
At least 20 Business days, but less than 40 Business Days	5%
Less than 20 Business Days	10%

- 12.3 Northpower will use reasonable endeavours to mitigate any unrecoverable costs before claiming them from the Customer.

- 12.4 The Early Termination Charge, combined with all other amounts charged to the Customer under this Agreement, will not exceed the Quoted Price.

13 Disputes

- 13.1 No party will initiate any court proceedings relating to any dispute or claim arising under or in connection with the Agreement, including any question concerning its validity, breach or termination, (in each case, a **Dispute**) except as permitted by this clause 13.
- 13.2 A party claiming that a Dispute has arisen must give notice to the other party outlining the nature of the Dispute (**Dispute Notice**). After receipt of a Dispute Notice, the parties must meet as soon as reasonably practicable to discuss the Dispute in good faith.
- 13.3 If the Dispute has not been resolved within 15 Business Days of receipt of the Dispute Notice, either party may give notice referring the Dispute to mediation (**Mediation Notice**). The mediation will be conducted on the terms of the Resolution Institute Standard Mediation Agreement (NZ version). The mediator and their fee will be agreed by the parties, or if not agreed within 7 days of the Mediation Notice, determined by the Resolution Institute.
- 13.4 If the Dispute has not been resolved within 15 Business Days of the Mediation Notice, and the mediation either has not started or has been terminated, either party may initiate court proceedings in relation to the Dispute, provided it has used reasonable endeavours to comply with this clause 13.
- 13.5 Each party will pay one half of the mediator's fee, and all of its own costs of participating in the mediation, except where clause 13.6 or 13.7 requires otherwise.
- 13.6 If the Agreement is a Consumer or Small Business Contract, and Northpower gives a Mediation Notice in relation to a Dispute, Northpower will pay the mediator's fee, except where clause 13.7 states otherwise.
- 13.7 Where a party is found to have raised a Dispute in bad faith or without any reasonable basis, that party will compensate the other party for its reasonable costs of participating in the mediation, including the other party's share of the mediator's fee.
- 13.8 If Northpower has given the Customer at least 15 Business Days' notice that the Customer is overdue in paying amounts owed to Northpower under the Agreement, nothing in this clause 13 prevents Northpower from seeking summary judgment for payment, and neither party will be required to participate in any mediation while those proceedings are pending.
- 13.9 If the Agreement is a Consumer or Small Business Contract, nothing in this clause 13 prevents the Customer from bringing proceedings in the Disputes Tribunal, and neither party will be required to participate in any mediation while those proceedings are pending.
- 13.10 Nothing in this clause 13 prevents a party from seeking urgent interim relief from a court.

14 Other legal matters

- 14.1 Any notice, consent, approval or similar communication under the Agreement (**Notice**) will be effective only if given in writing and dispatched to the address of the recipient specified for that purpose in the Contract Details, or a replacement address notified by the recipient in accordance with the Agreement.
- 14.2 Each Notice is deemed to have been received no later than the third Business Day after sending by registered mail or courier, or the next Business Day after sending by email unless before then the sender's email system is notified that the message has not been delivered.
- 14.3 An amendment to the Agreement will be effective only if in writing and signed by each party.
- 14.4 The Agreement is the entire arrangement between the parties relating to the Services, and replaces all previous agreements, arrangements, understandings and representations relating to that subject matter. The Agreement does not include any terms attached to a purchase order or similar document issued by the Customer.
- 14.5 Neither party may transfer any of its rights or obligation under the Agreement to a third party, except with the prior consent of the other party, not to be unreasonably withheld.

- 14.6 Unless stated otherwise, each party will pay its own costs in connection with the negotiation, preparation and execution of the Agreement.
- 14.7 Each party will do all things and execute all documents reasonably required in order to give effect to the Agreement.
- 14.8 The Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 14.9 Nothing in the Agreement makes either party an agent, partner or joint venturer of the other, or creates any other fiduciary duties.
- 14.10 Each party's rights, powers and remedies under the Agreement are cumulative and do not exclude any other rights, powers or remedies that party may have.
- 14.11 A determination that a provision of the Agreement is illegal, invalid or unenforceable will not affect any other part of the Agreement.
- 14.12 A party will not be taken to have waived any power, right or remedy in connection with the Agreement unless the waiver is given in writing and signed by that party. A single or partial exercise of such a right, power or remedy does not preclude further exercises of the same.
- 14.13 The Agreement does not create any rights enforceable by a third party.
- 14.14 The Agreement is binding only once each party has signed a single original of the Agreement, or once each party has received a counterpart signed by the other party, although that may include a signed original, a scanned copy of a signed original, or a digitally signed copy.

15 Glossary

In the Agreement, unless the context requires otherwise:

Business Day means a day on which registered banks are open for ordinary over-the-counter business in Auckland, excluding Saturdays, Sundays and statutory public holidays in Auckland.

Charges means the fees, charges, disbursements and other amounts payable for the Services, as specified in the Agreement and varied in accordance with its terms from time to time.

Consumer or Small Business Contract means an Agreement that is not a Larger Trade Contract.

Contract Details means the document accepted by both parties, incorporating these General Terms and creating the Agreement, in the form of a letter, a purchase order or otherwise.

Customer means the party purchasing the Services, as identified in the Contract Details.

Extraordinary Events means any events beyond the reasonable control of the party claiming relief under the Agreement, including any strike, lockout or other industrial disturbance.

Insolvency Event means where a party:

- (a) is insolvent or bankrupt, or ceases to carry on business;
- (b) enters into an arrangement with its creditors;
- (c) goes into receivership or has a receiver, trustee and/or manager appointed in respect of all or any material part of its property or business; and/or
- (d) goes into liquidation, voluntary administration, bankruptcy, or any similar process.

Larger Trade Contract means an Agreement where the Customer is acquiring the Services in trade, and either the Quoted Price on its own is more than \$50,000 plus GST or the Quoted Price plus the Customer's total spend with Northpower on consultancy, construction, installation, maintenance and/or upgrade work in the 12 months before the date of the Agreement is more than \$100,000 plus GST.

Materials means materials or equipment that Northpower supplies, or is required to supply, to the Customer under the Agreement.

Quoted Price means the total of all Charges as quoted and/or estimated in the Contract Details, as updated by Northpower and approved by the Customer from time to time in accordance with clause 4.2 and/or clause 6.

Services means the services to be carried out by Northpower for the Customer as defined in the Contract Details, as varied in accordance with the Agreement from time to time.

Site means the site(s) at which the Services are to be performed, excluding any sites owned or leased by Northpower.

Variation a change or addition to the contractual scope, timeframes, charges or other requirements for the Services.

Variation Event means:

- (a) the Customer's breach of the Agreement;
- (b) or additions after the date of the Agreement to any statute, regulation or by-law, or requirements of any authority with jurisdiction over any part of the Services;
- (c) inaccurate, misleading or incomplete information supplied by or on behalf of the Customer and relied on by Northpower in planning, pricing or performing the Services;
- (d) any defective workmanship or materials supplied by the Customer or its third party contractors or suppliers;
- (e) variance from an "assumption" specifically identified as such in the Agreement; and/or
- (f) any other events identified in the Agreement as entitling Northpower to a Variation.

Works means the physical works (if any) executed (or to be executed) as part of the Services. This includes any construction, earthworks or demolition carried out (or to be carried out), and any structure or component erected or installed (or to be erected or installed), as part of the Services, whether temporary or permanent.

16 Rules of interpretation

In the Agreement, unless the context requires otherwise:

- (a) any obligation not to do anything includes an obligation not to encourage, permit or cause that thing to be done;
- (b) any form of the word "includes" does not imply any limitation;
- (c) all monetary amounts are stated in New Zealand currency;
- (d) references to any "party" mean a party to the Agreement and include that party's successors and permitted assignees;
- (e) references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time.
- (f) references to any statutory provision include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument or other determination made under it; and
- (g) references to a "person" include an individual, firm, company or association, any part of central, regional or local government, and any public authority or agency.

17 Order of priority

If and to the extent necessary to resolve any conflict, the different parts of the Agreement will be read in the following descending order of priority:

- (a) any "specific terms" or "special terms" identified as such in the Agreement;
- (b) these General Terms;
- (c) the Contract Details, although this does not prevent the Contract Details from modifying or overriding other parts of the Agreement where that is clearly intended;
- (d) any other documents attached or referred to in the Contract Details.