

## General Terms and Conditions of Supply

### 1. Interpretation

#### 1.1 In these General Terms and Conditions:

**Acceptance** means when Customer accepts the Quotation by notification in writing to Absorb it Ltd. and by so doing constitutes entering into the Agreement.

**Agreement** means the combination of any Quotation accepted by Customer as well as the General Terms and Conditions to which Customer has agreed either as part of the Quotation or separately;

**Business Day** means Monday to Friday, except for public holidays;

**Customer** means the person named in the Quotation;

**Delivery Date** means the delivery date for the Goods set out in the Quotation or any agreed variation to that date;

**Hourly Rates** means Absorb it Ltd's standard hourly rates as specified by Absorb it Ltd in the Quotation or otherwise agreed to by Customer;

**Goods** means all products, supplies, raw materials or fees or Services supplied by Absorb it Ltd to Customer (excluding Plant but including software) and used for the purpose of producing an output. Where the context so permits, the terms 'Goods' or 'Services' shall be interchangeable for the other. Services shall include designs and related management and audit/ consulting services.

**Notification** means when either Absorb it Ltd or Customer communicates with the other party in writing of any matter including that within the agreement;

**Plant** means any equipment, item or product (or part thereof) supplied to Customer (other than Goods) and which is used in production or processing;

**Price** means the purchase price for the Plant or Goods set out in the Quotation;

**Quotation** means the written Quotation including any variation thereto and as agreed between Absorb it and Customer;

**Site** means Customer's site specified in the Quotation;

**Specifications** means the specifications for the Plant or Goods as set out in the Quotation;

**Absorb or Absorb it** means Absorb it Limited, NZCN 8337505;

**Terms** means these General Terms and Conditions of Supply together with any other Customer Responsibilities forming part of the Agreement;

**Third Party Component** means a component of the Plant or Goods supplied by a third party. **Third Party** shall be construed accordingly.

#### 1.2 If there is a conflict between the Quotation and these Terms, the Quotation will prevail.

### 2. Scope and Term

#### 2.1 Absorb it Ltd will supply the Plant or Goods to Customer pursuant to the Agreement.

#### 2.2 Any Agreement will commence when the Quotation is accepted by Customer and will continue in force as long as Absorb it Ltd is supplying Plant or Goods to Customer under that Agreement.

### 3. Price and Payment

#### 3.1 The Price shall be:

- (a) exclusive of GST unless expressly quoted otherwise or as set out in the

- Quotation or as indicated on any invoice provided by Absorb it Ltd to Customer.
- (b) the Price is as at the date of delivery of the Plant or Goods (or part thereof) according to Absorb it Ltd's current price list; or
  - (c) Absorb it Ltd's estimated price or its fee which will be valid for the period stated in the Quotation or otherwise for a period of sixty (60) days.
- 3.2 Absorb it Ltd reserves the right to change the Price:
- (a) if a variation to the Plant or Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of work; or
  - (d) if a variation occurs as a result of fluctuations in currency exchange rates
- 3.3 At Absorb it Ltd's sole discretion, a non-refundable deposit may be required.
- 3.4 Time for payment for the Plant or Goods being of the essence, the Price will be payable by Customer on the date/s determined by Absorb it Ltd and agreed between Absorb Ltd and Customer which may be:
- (a) on delivery of the Plant or Goods; or
  - (b) before delivery of the Plant or Goods; or
  - (c) by way of instalments/progress payments in accordance with any payment schedule agreed to between Absorb it Ltd and Customer; or
  - (d) the twentieth (20th) day of the month following the date of any invoice given to Customer by Absorb it Ltd; or
  - (e) the date specified on any invoice or other form as being the date for payment or
  - (f) any combination or variation of the above.
- 3.5 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between Absorb it Ltd. and Customer.
- 3.6 Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to Customer by Absorb it Ltd nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.7 Unless otherwise stated the Price does not include GST. In addition to the Price Customer must pay any applicable GST, without deduction or set off of any other amounts, at the same time and on the same basis as Customer pays the Price. In addition, Customer must pay any other taxes and duties that may be applicable in addition to the Price (plus GST) except where they are expressly included in the Price.
- 3.8 Without prejudice to its other rights and remedies, Absorb it Ltd may, until payment is received in full by Absorb it Ltd:
- (a) suspend the manufacture and supply of Plant or Goods or any undelivered components of same, or the provision of Services under this Agreement, and Customer will be liable on default for all legal and agency costs incurred in recovering all overdue amounts.
- 3.9 Where this Agreement has been entered into by an agent (or a person purporting to act as agent) on behalf of Customer, the agent and Customer shall be jointly and severally liable for payment of all amounts owing to Absorb it or by Absorb it to any third party under this agreement as well as any fees and expenses due to Absorb it Ltd under this Agreement.
- 3.10 Where Services are carried out on a time charge basis, Absorb it Ltd may purchase such incidental Goods and/or services as are reasonably required for

Absorb it Ltd to perform the Services. The cost of obtaining such incidental Goods and/or services shall be payable by Customer. Absorb it Ltd shall maintain records which clearly identify time and expenses incurred.

**4. Delivery of Goods - including Installation of Plant where relevant.**

- 4.1 Subject to clauses 4.2 and 4.3, the Goods will be delivered to the Site by Absorb it Ltd or its carrier at Customer's cost, unless provided for otherwise in the Quotation.
- 4.2 Absorb it Ltd may charge Customer for all storage, transportation, crane hire and other expenses incurred in delivering the Goods including any work performed by Absorb it Ltd's personnel at the Hourly Rates if not included in the Quotation.
- 4.3 Absorb it Ltd will use reasonable endeavours to deliver the Goods by the delivery date(s) stated but that date is an estimate only and Absorb it Ltd will not be liable for any delay in delivery.
- 4.4 Subject to any express agreement by the parties to the contrary:
- (a) Customer will be responsible for installing and provisioning any Plant including connections to other works at the Site; and
  - (b) where Absorb it Ltd agrees to assist with installation and provisioning, Absorb it Ltd will charge Customer for such assistance at its Hourly Rates, and for all expenses incurred in providing such assistance.
- 4.5 Customer will, at its own cost:
- (a) obtain all necessary resource consents and regulatory approvals for installing and provisioning the Plant at the Site;
  - (b) provide reasonable access to the Site to Absorb it Ltd's personnel to the extent required to deliver the Goods or Plant to Customer and provide any other services pursuant to this Agreement;
  - (c) ensure the safety of the Site and notify Absorb it Ltd's personnel of any safety procedures to be followed at the Site; and
  - (d) prepare the Site for the delivery, provisioning and installation of the Goods or Plant.
- 4.6 Customer indemnifies Absorb it Ltd against all loss, liability, costs or expenses incurred by Absorb it Ltd because of:
- (a) failure or delay by Customer to perform any of its obligations under this Agreement;
  - (b) failure or refusal of Customer to take delivery of the Goods on or after the Delivery Date;
  - (c) any unforeseen failure or delay by any third-party crane operator in lifting the Goods onto the Site;
  - (d) Customer arranging for the Goods to be lifted onto the Site.
- 4.7 Customer's liability under clause 4.6 includes liability for:
- (a) any waiting time for Absorb it Ltd's personnel (charged at the Hourly Rates);
  - (b) any costs incurred by Absorb it Ltd or levied by a supplier of Third-Party Components for storage, transportation or insurance of the Goods or any components or portion of the Goods;
  - (c) any loss suffered by Absorb it Ltd in relation to the purchase of Third-Party Components as a result of increases to foreign exchange rates where delivery of the Goods is delayed by more than 30 days after the agreed date for such installation.

**5. Access to Site and Underground Locations**

- 5.1 Customer shall ensure that Absorb it Ltd has clear and free access to the Site at all

times to enable Absorb it Ltd to effect delivery of the Goods.

- 5.2 Prior to Absorb it Ltd commencing any work Customer must advise Absorb it Ltd of the precise location of all underground services on the site and clearly mark the same. The underground mains and services 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 the Site.

## **6. Producer Statements – Plant only**

- 6.1 Absorb it Ltd will have access to inspect the Plant at the Site following delivery of the Plant or, where Absorb it Ltd assists with installation and provisioning of the Plant following such provisioning.
- 6.2 Following the inspection of the Plant under clause 6.1, any Producer Statement which Absorb it Ltd is required to provide will be provided.
- 6.3 Customer acknowledges that the provision of a Producer Statement under clause 6.2 does not constitute a warranty or guarantee in respect of the Plant and that Customer's sole rights in respect of the Plant are set out in clauses 9 and/ or 13.

## **7. Risk and Ownership**

- 7.1 Risk of the Plant or Goods passes to Customer on delivery, but ownership of same does not pass to Customer until Customer has paid all amounts owing under this Agreement.
- 7.2 While ownership of the Plant or Goods remains with Absorb it Ltd, Customer must:
- (a) not sell, lease, create a security interest in or permit any lien over, or part with possession of the Plant or Goods; and
  - (b) keep the Plant and Goods insured with a reputable insurance company against risk of loss or damage by hazards normally insured against.
- 7.3 To the extent that the Plant or Goods constitutes personal property for the purposes of the Personal Property Securities Act 1999 (PPSA):
- (a) Customer grants Absorb it Ltd a purchase money security interest under the PPSA in the Plant or Goods as security for payment of all amounts owing under this Agreement; and that Absorb it Ltd is entitled as of right to register a security interest and will sign all documentation and provide all information required to enable Absorb it Ltd to register a financing statement or a financing change statement on the PPSR.;
  - (b) sections 114(1)(a), 117(1) (c ), 133 and 134 of the PPSA will not apply to the enforcement by Absorb it Ltd of the security interest set out in this clause. and Customer waives its rights under sections 116, 119, 120(2). 121, 125, 126, 127, 129 and 131 of the PPSA in respect of such enforcement.

## **8. Reliance**

- 8.1 Absorb it Ltd shall be entitled to rely on the accuracy of any plans, specifications and other information provided by Customer. Customer acknowledges and agrees that in the event that any of this information provided by Customer is inaccurate, Absorb it Ltd accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 Where Absorb it Ltd is required to install the Plant Customer warrants that the structure of the premises or equipment in or upon which the Plant is to be installed or erected is sound and will sustain the installation and work incidental

thereto and Absorb it Ltd shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

- 8.3 Any advice, recommendation, information, assistance or service provided by Absorb it Ltd in relation to Plant, Goods and/ or Services supplied is given in good faith, is based on Absorb it Ltd's own knowledge and experience and shall be accepted without liability on the part of Absorb it Ltd and it shall be the responsibility of Customer to confirm the accuracy and reliability of the same in light of the use to which Customer makes or intends to make of the Plant Goods or Services.
- 8.4 Customer acknowledges that Absorb it Ltd is only responsible for parts that are replaced by Absorb it Ltd, and in the event that other parts, subsequently fail, Customer agrees to indemnify Absorb it Ltd against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

## **9. Defects in Goods**

- 9.1 Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify Absorb it Ltd of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. Customer shall afford Absorb it Ltd an opportunity to inspect the Goods within a reasonable time following delivery if Customer believes the Goods are defective in any way. If Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Absorb it Ltd has agreed in writing that Customer is entitled to reject, Absorb it Ltd's liability is limited to either (at Absorb it Ltd's discretion) replacing the Goods or repairing the Goods.
- 9.2 Goods will not be accepted for return for any reason other than those specified in clause 9.1 above.

## **10. Returns of Goods**

- 10.1 Returns of Goods will only be accepted provided that:
- (a) Customer has complied with the provisions of clause 9.1; and
  - (b) Absorb it Ltd has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at Customer's cost within seven (7) days of the delivery date; and
  - (d) Absorb it Ltd will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) the Goods 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.
- 10.2 Absorb it Ltd may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of up to ten percent of the value of the returned Goods plus any freight. Non-stocklist items or Goods made to Customer's specifications are under no circumstances acceptable for credit or return.

## **11. Overdue Accounts**

- 11.1 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 Absorb it Ltd's discretion such interest shall compound monthly at such a rate until paid, after as well as before any judgment.
- 11.2 If Customer owes Absorb it Ltd any unpaid amount, Customer shall indemnify Absorb it Ltd from and against all costs and disbursements incurred by Absorb it Ltd in recovering the debt including but not limited to internal administration fees,

legal costs on a solicitor and client basis, Absorb it Ltd's collection agency costs, and bank dishonour fees.

- 11.3 Further to any other rights or remedies Absorb it Ltd may have under this Agreement, if a Customer has made payment to Absorb it Ltd by credit card, and the transaction is subsequently reversed, Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Absorb it Ltd under this clause 11, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to Customer's obligations under this Agreement.
- 11.4 Without prejudice to any other remedies Absorb it Ltd may have, if at any time Customer is in breach of any obligation (including those relating to payment) under these Terms Absorb it Ltd may suspend or terminate the supply of Goods to Customer. Absorb it Ltd will not be liable to Customer for any loss or damage Customer suffers because Absorb it Ltd has exercised its rights under this clause.
- 11.5 Without prejudice to Absorb it Ltd's other remedies at law Absorb it Ltd shall be entitled to cancel all or any part of any order of Customer which remains unfulfilled and all amounts owing to Absorb it Ltd shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Absorb it Ltd becomes overdue, or in Absorb it Ltd's opinion Customer will be unable to make a payment when it falls due;
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of Customer or any asset of Customer.

## **12. Cancellation**

- 12.1 In the event that Customer cancels delivery of the Goods Customer shall be liable for any and all loss incurred (whether direct or indirect) by Absorb it Ltd as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.2 Cancellation of orders for Goods made to Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

## **13. Limited Warranty - Plant**

- 13.1 Absorb it Ltd will use its reasonable endeavours to ensure that the Plant (excluding any Third-Party Components) and any assistance provided by Absorb it Ltd with installing and provisioning the Plant under clause 4 will comply with any agreed Specifications in all material respects.
- 13.2 If, for any reason the Plant or component does not materially comply with the agreed Specifications, Customer's sole remedy for such non-conformity shall be limited to, either repair or replacement of the Plant or component by Absorb it Ltd (**Limited Warranty**).
- 13.3 Where following inspection or testing by Absorb it Ltd the Plant is found not to breach the Limited Warranty, Customer will reimburse Absorb it Ltd for all costs and expenses reasonably incurred by Absorb it Ltd in carrying out such inspection or testing.
- 13.4 The Limited Warranty as given above is subject to the following terms:
- (a) Absorb it Ltd is not liable for any defect in the Plant caused by fair wear and tear, abnormal or unsuitable conditions of use or any neglect or default of Customer or any third party: and
  - (b) Absorb it Ltd is not liable for any breach of the Limited Warranty unless it is

notified in writing within 3 months of the Delivery Date and provided Absorb it Ltd has been given reasonable opportunity to inspect the Plant.

- 13.5 Absorb it Ltd will have no liability under the Limited Warranty in respect of the Plant if:
- (a) the total Price for the Plant has not been paid; or
  - (b) the Plant has been altered or modified by Customer or any other party without Absorb it Ltd's prior written consent.
- 13.6 The Limited Warranty does not extend to any Third-Party Components, in respect of which Customer will only be entitled to the benefit of any warranties given to Absorb it Ltd of such Third-Party supplied Components. Absorb it Ltd will use reasonable endeavours to assign to Customer any warranties received from such third supplier(s) and will assist Customer (at Customer's cost) to enforce such warranties on Customer's behalf.
- 13.7 Customer acknowledges that:
- (a) the Plant supplied to Customer under this Agreement is supplied for business purposes and the Consumer Guarantees Act 1993 does not apply; and
  - (b) To the fullest extent permitted by law, all implied warranties are excluded, and all terms, conditions and warranties (except those given in writing by Absorb it Ltd or its suppliers or manufacturers) relating to the quality or fitness for the purpose of the Plant are excluded.

#### **14. Insurance and Limitation of Liability**

- 14.1 If required, Customer shall maintain such insurance as may be reasonably necessary to protect Customer from any liability arising in connection with this Agreement.
- 14.2 Absorb it Ltd shall be under no liability whatsoever to Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by Customer. To the fullest extent permitted by law, Absorb it Ltd's total liability under this Agreement will not exceed in aggregate the lesser of the actual loss or damage suffered by Customer or the total amount paid by Customer under this Agreement.
- 14.3 Absorb it Ltd will not be liable to Customer for any delay in delivery, installation or provisioning of the Plant or Goods.
- 14.4 If Absorb it Ltd is found liable to Customer (whether in contract, tort or otherwise), and Customer and/or a Third Party has contributed to the loss or damage, Absorb it Ltd shall only be liable to the proportional extent of its own contribution.

#### **15. General**

- 15.1 The failure by either party to enforce any provision of these terms 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 shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These Terms 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.
- 15.3 Neither party shall assign all or any part of their rights and obligations under this agreement without the written consent of the other party. Absorb it Ltd may subcontract some of its Services to a third party from time to time.

- 15.4 Customer agrees that Absorb it Ltd may amend these terms and conditions by notifying Customer in writing. These changes shall be deemed to take effect from the date on which Customer accepts such changes, or otherwise at such time as Customer makes a further request for Absorb it Ltd to provide Plant or Goods to Customer.
- 15.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, earthquake, pandemic or other event beyond the reasonable control of either party.
- 15.6 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.
- 15.7 Absorb it Ltd has not and will not assume any obligation as Customer's agent or otherwise which may be imposed upon Customer from time to time pursuant to the Health and Safety in Employment Act 1992 (the **Act**) arising out of this Agreement. Customer agrees that in terms of the Act, Absorb it Ltd will not be the person who controls the place of work.
- 15.8 Customer shall give Absorb it Ltd not less than fourteen (14) days prior written notice of any proposed change of ownership of Customer and/or any other change in Customer's details (including but not limited to, changes in Customer's name, address, contact phone and email address). Customer shall be liable for any loss incurred by Absorb it Ltd as a result of Customer's failure to comply with this clause.
- 15.9 Electronic signatures and information shall be deemed to be accepted by either party providing that the parties have complied with the applicable provisions in the Contract and Commercial Law Act 2017, Part 4.

## **16. Disputes**

- 16.1 If at any time a dispute arises in relation to the Agreement, Absorb it Ltd and Customer shall give written notice to the other party within 10 days of the dispute arising with comprehensive particulars of the issues in writing. In the first instance both parties their senior management or Directors shall meet and use their best endeavours to resolve the dispute.
- 16.2 In the event that the parties are unable to resolve the dispute they will attempt to do so by mediation if mutually acceptable.
- 16.3 If however the parties fail to reach a resolution after mediation, they shall then refer the dispute to arbitration. This shall be done within a further 10 days after the cessation of mediation procedure. The arbitrator shall be agreed by the parties or failing agreement within 4 days, the arbitrator shall be appointed by the President of the Institute of Professional Engineers of NZ (or its equivalent body) at the request of either party. The arbitration shall occur in Christchurch, New Zealand. Arbitration shall be deemed to be within the meaning of the Arbitration Act 1996 and its amendments and the provisions of this Act shall apply.

## **ACKNOWLEDGEMENT**

Customer acknowledges that it has received a copy of these terms and conditions and in particular that the terms contained herein constitute a "security agreement" for the purposes of the Personal Property Securities Act 1999.





By Executing this Agreement Customer acknowledges that it has read and understood the Terms and Conditions of Absorb it Ltd and agrees to be bound accordingly in all purchases and other dealings with Absorb it Ltd whether by individual Agreements or otherwise.

**EXECUTION**

**Signed for and on behalf of Absorb it Ltd:**

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Name and Position.....

**Date:** .....

**Name of Customer**.....

**Signed for and on behalf of Customer by its authorised signatory**

.....

**Name and Position**.....

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***Signature of Authorised Person***

**Date:** .....