HYDRO X LTD - TERMS AND CONDITIONS (OCTOBER 2024)

1 **GENERAL**

a All Services are carried out on the basis of the following terms and conditions unless otherwise agreed in writing.

2 **INTERPRETATION**

a In these terms and conditions, unless the context indicates otherwise:

"Client" means the party who employs the Company to undertake the Services and its successors and permitted assigns;

"Company" means Hydro X NZ Limited and its successors and assigns;

"Contract" means the relevant Work Order, these terms and conditions and the attached Special Conditions (if any);

"Goods" means any products, materials or other incidental goods expressly contemplated by the Work Order to be supplied by the Company in carrying out the Services;

"GST" means goods and services tax payable in terms of the Goods and Services Tax Act 1985;

"PPSA" means the Personal Property Securities Act 1999;

"Project" means the project named in the relevant Work Order for which the Services are to be provided; and

"Services" means the services to be performed by the Company for the Client, and includes (if applicable) the provision of any Goods.

3 **TERMS OF SERVICES, COSTS & ENGAGEMENT IN TRADE**

a The Client wishes to receive the Services and the completion of the Project and the Company agrees to provide the Services and undertake the Project in return for the payment of the fee as quoted, with such adjustments as may be made in terms of this clause 3.

b Unless the Client advises otherwise in writing prior to undertaking the Services, the Client warrants that the Services are acquired in trade for the purposes of a business, and the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 (including sections 9, 12A, 13 and 14(1)); and the Client acknowledges and agrees that it is fair and reasonable to do so.

c The Company shall not be liable for any delay or non-performance arising from or attributable to circumstances beyond its control (including, but not limited to, acts of God, labour disputes, transportation delays and delays in the supply of goods and services by suppliers to the Company) and reserves the right to charge for any such delay whilst on site at the average hourly charge-out rate of the Company's personnel who are delayed on site.

d The Company shall not be liable for any delay or for exceeding the estimated or quoted price because of non-disclosure or withholding of information relevant to the Project by the Client or its contractors or agents.

e Where the Client directs that certain specialists supply services as part of the Project, the Company shall not be responsible for the co-ordination of such services and materials into the Project as a whole.

f All rights of entry, services information and approvals (other than those expressly required by this Contract to be provided by the Company) required to enable the Company to perform the Services shall be secured by the Client.

g The Company is not responsible for the make good of any damage to surfaces or subsoil arising from any investigative or other works necessary for the performance of the Services.

h The Company will have in place a health and safety management plan for the Services and will comply with any health and safety plan operated by the Client or third party in control of the site. The Company must be provided with site hazard and safety information, and will not be obliged to commence any work until its personnel have completed a site safety induction.

4 **QUOTATIONS AND ESTIMATES**

a The Company shall use reasonable endeavours to perform the Services at the quoted or estimated price using its current resources and such quote is an estimate only. Unless expressly indicated otherwise, the quoted or estimated price:

i assumes the Services will be undertaken during the Company's normal business hours (7.30am to 5pm) Monday to Friday excluding public holidays; and

ii includes a number of assumptions and does not include allowance for any traffic management or road control, or any earthworks or vegetation clearance, access to the site assumed to be of a reasonable standard and the site reasonably level and ordinary ground conditions and fuel and other costs are assumed at the time of the quotation; and

while the Company will take reasonable steps to keep the Client informed as the Project is undertaken of such increased costs, such amounts are payable on presentation of an invoice.

b Unless otherwise specified in the Work Order, a quoted price for supply of Services is valid for 30 days, and subsequently may at the discretion of the Company be deemed to be withdrawn unless otherwise agreed.

c Where an estimated price is provided, the Client will receive the full benefit of any lesser cost for the supply of the Services, but the Company reserves the right to charge a higher price where time involved or the costs for the supply of the Services exceed the estimate.

5 **PAYMENT**

a Payment for all Services is due on the 20th of the month following the date of issue of invoice, or as otherwise specified in the Work Order. In the case of Projects of greater than one month's duration, invoices may be issued on a monthly basis. Interest shall accrue on a daily basis and be payable on all overdue sums at 12% per annum from the date payment is due until the date payment is received in full. The Company also reserves the right to recover from the Client all expenses and legal costs of the Company (calculated between solicitor and own client) in relation to obtaining or seeking to obtain remedy of default in payment by the Client.

b All prices quoted or estimated are exclusive of GST. The Client shall pay at the time when payment is due pursuant to clause 5(a) any GST payable in respect thereof.

7 **LIABILITY, INSURANCE & GUARANTEE**

a Subject to clause 7(d), the maximum aggregate liability of the Company in respect of this Contract (whether in contract, tort or otherwise) shall be limited to five times the sum paid by the Client to the Company for the Services provided (exclusive of GST and disbursements) with a maximum limit of $500,000.

b The Company shall not be liable for any special, indirect, incidental or consequential damages nor for any lost profits or injury arising from the provision of the Services under the Contract.

c If the Company is found liable to the Client (whether in contract, tort or otherwise) and the Client and/or a third party has contributed to the loss or damage, the Company shall only be liable to the proportionate extent of its own contribution.

d The Company shall hold and maintain for the duration of the Services public liability insurance for $10 million and motor vehicle liability insurance applicable to all vehicles. The Company will, on request by the Client, provide certificates evidencing the currency of those insurances.

e In consideration for the Company agreeing to enter into and perform the Services in terms of the Contract, the Authorised Person/s who sign the Work Order and/or Special Conditions (the "Guarantor") hereby jointly and severally guarantee due and punctual payment of all monies owed to the Company by the Client as and when the same shall become due and payable to the Company.

f The Guarantor acknowledges and agrees that:

i they will be deemed to be a principal debtor(s) and not merely a surety/ies, and they are jointly and severally liable with the Client to pay the moneys and in all respects; and

ii they indemnify the Company against all loss or costs (including without limitation costs of enforcement) incurred by the Company should the Guarantor fail to comply with its obligations to the Company or fail to pay all monies as they fall due; and

iii the Company may require the Guarantor to pay such monies and to indemnify the Agent as aforesaid without the Company first taking proceedings against the Client or any other person; and

iv the Guarantor's liability under this guarantee shall not be discharged by any waiver, extension of time or other indulgence given to the Client, or any other act or omission which, but for this provision, might operate to discharge or impair the effect of this guarantee.

g The Guarantor acknowledges having read and understood the terms of this guarantee and that they have been advised to seek independent legal advice prior to signing and have been given the opportunity to do so and have either done so, or declined to do so.

8 **TERMINATION**

a Subject to clauses 8(b) and 8(c) the Contract shall terminate upon the earlier of:

i completion of the Services by the Company and payment by the Client; or

ii mutual agreement of the parties.

b The Company, without liability on its part, shall have the right to cancel the Contract (so far as it remains unperformed) wholly or in part, or any other contract which has not been completed, with immediate effect by giving written notice to the Client, and all sums outstanding (whether legally demanded or not and whether then due or not) shall become immediately due and payable to the Company if:

i the Client breaches these terms and conditions, including default in any payment on the due date; or

ii the Client goes into liquidation, bankruptcy, statutory management or receivership or becomes insolvent or unable to pay its debts or enters into an arrangement or composition with its creditors.

c The Company may terminate the Contract by notice to the Client of at least 14 days.

d Any termination of the Services shall be without prejudice to the rights of either party in existence prior to termination, in particular for unpaid moneys due to the Company.

9 **NOTICES**

a Any notices or other communications to be given hereunder may be delivered personally, or sent by email or by prepaid post to the last known address of the addressee and shall be deemed to have been given two working days after posting or, in the case of personal delivery, or email delivery on the date of delivery provided such date is a business day and is within business hours of 08:00 to 17:00 failing which it'll be deemed to be delivered on the next business day.

10 **ASSIGNMENT**

a The Client shall not assign its rights or obligations hereunder without the prior written consent of the Company. No assignment by the Client shall be effective unless and until all outstanding amounts are paid to the Company.

11 **VARIATION**

a The Client agrees that the Contract may be varied, added to, or amended by the Company by written notice to the Client;

b Any proposed variation to the Contract by the Client must be requested in writing.

12 **SEVERABILITY**

a If any provision of this Contract is invalid or is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

b If any part of this Contract is invalid or unenforceable, that part is deleted and the remainder of this Contract remains effective.

6 **CONFIDENTIALITY, CREDIT CHECKS AND PUBLICATION OF RESULTS**

a The Client expressly authorises the Company to undertake a credit check in respect of the Client, its directors and any shareholders prior to providing any Services. Pursuant to such credit check the Company may cancel the Contract on written notice to the Client and any deposits paid will be refunded less an administration and credit check fee.

b The Client shall provide the Company free of cost with all information about the Project or otherwise relevant to enable the Company to obtain a clear understanding of the Client’s requirements for the Services. The Company shall keep in confidence all confidential information it has received from the Client except confidential information in the Company's possession prior to receipt from the Client or which subsequently comes into the public domain (other than as a result of unauthorised disclosure by the Company). The Company shall be entitled to use and disclose such confidential information to its employees, representatives, suppliers, subcontractors, and affiliates on a need to know basis as reasonably required for the Services, or as otherwise required by law.