

1. Definitions

- 1.1 *Customer* means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any Quotation, work authorisation or any other form as provided by EAN to the Customer.
- 1.2 *EA Equipment* means all plant and equipment on the network side of the Network Connection Point including any customer premise equipment supplied as part of the EA Works and any other equipment specified by EAN as being EA Equipment.
- 1.3 *EAN* means Electricity Ashburton Limited.
- 1.4 *EA Works* means the supply of an electrical and/or telecommunications connection to the Customer through the provision of Goods and Services and/or any maintenance, repairs and any other work in relation to a Customer's connection which may be carried out by EAN at any time.
- 1.5 *Guarantor* means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis if required by EAN.
- 1.6 *Goods* means goods supplied by EAN to the Customer as required for the EA Works and more particularly goods which are located on the Customer side of the Network Connection Point (subject to the definition of EA Equipment) and includes Goods described on any invoices, Quotation, work authorisation or any other forms as provided by EAN to the Customer.
- 1.7 *Network Connection Point* means:
- with respect to electrical connections, the point where the Customer's supply is physically connected to EAN's electricity network and may be a transformer, pillar box on the property boundary or such other point as is marked "Network Connection Point" on any plan or schematic provided as part of the Quotation.,
 - with respect to telecommunications connections, the point at the Customer's property where the Customer connects to EAN's telecommunications network, including the router or other access point where EAN's network ends on the Customer's property.
- 1.8 *Price* means the price payable for the Goods and Services as agreed between EAN and the Customer in accordance with clause 3 of this Agreement and may include capital contributions.
- 1.9 *Quotation* means the quotation provided to the Customer for the EA Works and includes a customer connection application form for telecommunications connections.
- 1.10 *Services* means all services supplied by EAN to the Customer as required for the EA Works or otherwise and includes any advice or recommendations.
- 1.11 *Service Provider* means any retailer approved by EAN who provides the Customer with any electricity or telecommunications services that use EA Equipment.
- 1.12 *Terms and Conditions* means these terms and conditions for customer connections.

2. Agreement

- 2.1 These Terms and Conditions shall apply to the supply of all Goods and/or Services by EAN to the Customer for the purposes of the EA Works unless agreed otherwise in writing and shall continue to apply as long as any EA Equipment is located at the Customer's premises (regardless of the existence or termination of any agreement with a Service Provider). For the avoidance of doubt, these Terms and Conditions do not apply to the supply of electricity or telecommunications services which will be covered by a separate agreement between the Customer and their Service Provider for those retail services.
- 2.2 The following constitutes acceptance of these Terms and Conditions:
- the Customer's signature on any Quotation provided by EAN;
 - any instructions received by EAN from the Customer for the supply of Goods and/or Services.
- 2.3 Where more than one Customer has accepted these Terms and Conditions, the Customers shall be jointly and severally liable for all payments of the Price.

3. Price and Payment

- 3.1 At EAN's sole discretion the Price shall be either:
- EAN's quoted Price (subject to clause 3.2) which shall be binding upon EAN provided that the Customer shall accept EAN's Quotation in writing within thirty (30) days of the date of the Quotation; or
 - where there is no quoted Price, the Price indicated on the invoices provided by EAN to the Customer in respect of Goods and/or Services supplied.
- 3.2 EAN reserves the right to change the Price prior to acceptance and to charge additional amounts reflecting increases in the cost of

supplying the Goods and/or Services subsequent to acceptance of the quoted Price.

- 3.3 At EAN's sole discretion a deposit, full payment in advance and/or a personal guarantee of directors or trustees in the event that the Customer is a company or trust may be required before the EA Works can commence.
- 3.4 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due on the 20th of the month following the date of the invoice.
- 3.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.6 If any easement over land is required in connection with the EA Works, the Customer shall be responsible for paying all associated costs.

4. Provision of Services and Delivery of Goods

- 4.1 EAN shall undertake the EA Works for the Customer as described in the Quotation. If the Customer is not the owner of the property the Customer will procure the owner's written consent for EAN to undertake the EA Works. EAN may delay the commencement of the EA Works until such consent is provided.
- 4.2 The Customer must provide EAN with details of the location of any underground services or infrastructure on the property prior to the commencement of the EA Works. EAN shall not be liable for any damage to the Customer's property caused by the Customer incorrectly identifying or failing to identify the location of any underground services or infrastructure.
- 4.3 Where necessary for the EA Works the Customer will grant access to EAN or any of its employees, agents or subcontractors to its premises for that purpose, provided that EAN shall endeavour to give reasonable advance notice to the Customer.
- 4.4 EAN shall make good any damage to the Customer's property up to a maximum cost of \$500,000 for any event or for any series of related events (up to a total of \$1,000,000) where in EAN's reasonable opinion:
- the damage was caused by the EA Works;
 - the damage could have been reasonably avoided by EAN in the circumstances;
 - the property that the Services were undertaken on was suitable for such Services to be performed without damage to that property; and
 - the damage was not wholly or partially caused by any pre-existing hazard on, or condition of, the property, provided that the Customer must notify EAN within one month of becoming aware that the property is damaged.
- 4.5 Delivery of the Goods shall take place when the Goods are installed on the Customer's side of the Network Connection Point.
- 4.6 Where EAN gives any dates in respect of completion of the EA Works in the Quotation it will use reasonable endeavours to meet those dates, however EAN shall not be liable for any delays due to causes beyond its control.

5. Risk

- 5.1 Risk in all Goods supplied shall pass to the Customer on delivery of the Goods to the Customer and any loss, damage or deterioration to the Goods thereafter shall be borne by the Customer. The Customer shall, notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods and the Services.
- 5.2 EAN is responsible for repairs and maintenance of EA Equipment. The Customer will grant or procure access to its property to EAN and any of its employees, agents or contractors for the purpose of maintaining any EA Equipment on the Customer's property, provided that EAN shall endeavour to give reasonable advance notice to the Customer.
- 5.3 The Customer is responsible for repairs and maintenance of all Goods. Where any EA Equipment is located on the Customer's property, the Customer shall indemnify EAN for any loss or damage to the EA Equipment unless directly caused by the failure of EAN to comply with these Terms and Conditions or any negligent act, error or omission of EAN.

6. Title

- 6.1 EAN and Customer agree that ownership of the Goods shall not pass until:
- the Customer has paid EAN all amounts owing for the particular Goods; and
 - the Customer has met all other obligations due by the Customer to EAN in respect of all contracts between EAN and the Customer.
- 6.2 Receipt by EAN 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 and until then, EAN's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
- (a) until such time as ownership of the Goods shall pass from EAN to the Customer, EAN may give notice in writing to the Customer to return the Goods or any of them to EAN. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
 - (b) the Customer is only a bailee of the Goods and until such time as EAN has received payment in full for the Goods the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for EAN; and
 - (c) in order to effect a return of Goods under sub clause (a) EAN or EAN's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and EAN will not be liable for any reasonable loss or damage suffered as a result of any action by EAN under this clause.
- 7. Personal Property Securities Act 1999 (PPSA)**
- 7.1 The Customer acknowledges and agrees that:
- (a) these Terms and Conditions constitute a security agreement in the Goods and EA Equipment for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by EAN to the Customer (if any) and all Goods that will be supplied in the future by EAN to the Customer.
- 7.2 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 EAN may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, EAN for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; and
 - (c) not register a financing change statement or change demand without the prior written consent of EAN. EAN and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this security agreement.
- 7.3 The Customer waives its right as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.4 Unless otherwise agreed to in writing by EAN, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.5 The Customer shall unconditionally ratify any actions taken by EAN under clauses 7.1 to 7.5.
- 8. Excluded Legislation**
- 8.1 If the Customer is acquiring Goods and/or Services for the purposes of trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the supply of Goods and/or Services by EAN to the Customer.
- 8.2 The parties agree that Part 3 of the Contract and Commercial Law Act 2017 does not apply.
- 9. Default & Consequences of Default**
- 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 1.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 9.2 Without prejudice to any other remedies EAN may have, if at any time the Customer is in breach of any obligation (including those relating to payment) EAN may suspend or terminate the supply of Goods and/or Services to the Customer, the supply of electricity or communications to the Customer (subject to any applicable obligations at law) and any of its other obligations under these Terms and Conditions. EAN will not be liable to the Customer for any loss or damage the Customer suffers because EAN has exercised its rights under this clause.
- 9.3 Without prejudice to EAN's other remedies at law EAN shall be entitled to cancel all or any part of the EA Works which remain unfulfilled and all amounts owing to EAN shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to EAN becomes overdue, or in EAN's opinion the Customer will be unable to meet its payments as they fall due;
 - (b) the 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 the Customer or any asset of the Customer.
- 9.4 The Customer hereby agrees to pay all of EAN's legal costs of and incidental to the enforcement of these Terms and Conditions including but not limited to costs incurred on a Solicitor client basis and collection agency costs.
- 10. Cancellation**
- 10.1 In the event that the Customer cancels delivery of Goods and/or the supply of Services EAN shall be entitled to retain any sums paid in respect of the Price and the Customer shall be liable for any loss incurred by EAN (including, but not limited to, any loss of profits) up to the time of cancellation.
- 11. Privacy Act 2020**
- 11.1 The Customer and the Guarantor/s (if separate to the Customer) authorise EAN to:
- (a) collect, retain and use any information about the Customer, for the purpose of providing the Goods and/or Services, assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - (b) disclose information about the Customer, whether collected by EAN from the Customer directly or obtained by EAN from any other source, to any Service Provider for the purpose of providing the Goods and/or Services or 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.
- 11.2 Where the Customer and/or Guarantors are an individual the authorities under clause 11.1 are authorities or consents for the purposes of the Privacy Act 2020.
- 11.3 The Customer and/or Guarantors shall have the right to request from EAN a copy of the information about the Customer and/or Guarantors retained by EAN and the right to request EAN to correct any incorrect information about the Customer and/or Guarantors held by EAN.
- 12. General**
- 12.1 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2 These Terms and Conditions shall be governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the courts of New Zealand.
- 12.3 Unless otherwise specified, EAN gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods and/or Services.
- 12.4 EAN shall be under no liability whatever to the Customer for any indirect or consequential loss and/or expense or any loss of profit suffered by the Customer however arising.
- 12.5 In the event of any breach of these Terms and Conditions by EAN or any negligent act, error or omission of EAN which directly causes costs, loss, damage or liability to the Customer the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the EA Works over the 12 months prior to the event giving rise to the claim.
- 12.6 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 EAN.
- 12.7 EAN may license or sub-contract all or any part of its rights and obligations and may assign its rights and benefits under these Terms and Conditions without the Customer's consent.
- 12.8 EAN reserves the right to review these Terms and Conditions at any time. If, following any such review there is to be any change to these Terms and Conditions, then that change will take effect from the date on which EAN notifies the Customer of such change.
- 12.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, epidemic, pandemic or other event beyond the reasonable control of either party.
- 12.10 The failure by EAN to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect EAN's right to subsequently enforce that provision.
- 12.11 The parties agree that the execution and transmission of a facsimile or emailed electronic copy of any Quotation to the other shall constitute a valid and binding offer or acceptance (as the case may be) for the purposes of clause 2.2.