

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. **“Authorised Person(s)”** shall mean the CEO, CFO, GM, Executive, Manager of Operations, Account, Sales, Project Procurement, Vendor or Supply Chain Manager or their nominee and similar authority having formal reasonably having conferred with TUMG or having issued instructions, how so they have been received.
- 1.2. **“Agreement”** These Terms and Conditions which are intended as a contract and shall form part of any Clients engagement with TUMG and shall be in addition to any other terms provided and having its meaning given in the specific agreement for Goods or Services provided.
- 1.3. **“Client”** means you, your successors and assignees or any person receiving, acting, relaying, or benefiting from our Services or receiving benefit, either directly or indirectly in exchange for Goods or subject to a purchase order or instruction of any kind.
- 1.4. **“Delivery”** shall mean the delivery of the Goods transferring the possession from TUMG to the Client in accordance with clause 9.
- 1.5. **“Discloser”** shall mean either [Party A] or [Party B] in its capacity as a discloser of Information to the other and **“Recipient”** shall have a corresponding meaning in its capacity as a receiver of Information under the Agreement and includes any Related Person of that party howsoever that might occur.
- 1.6. **“Goods”** shall mean all goods provided with or without being in conjunction of any **‘Services’** or the services in isolation including without limitation **‘Professional Services’**, **‘Consultancy Services’** or **‘Contracted Services’** of any kind supplied by TUMG at the Clients request from time to time. **“Product”** and **“Project”** shall have a corresponding meaning.
- 1.7. **“Price”** means the Price payable for the goods as agreed between TUMG and the Client in accordance with clause 10 below.
- 1.8. **“Purchase Order”** means a purchase order for the Goods.
- 1.9. **“Related Person”** means, any person that is related to the Recipient and includes any director, officer, employee, agent, subcontractor and the like.
- 1.10. **“Total Utilities Management Group Limited”** means all locations, branches and offices of Total Utilities and its subsidiary companies including any business divisions, or any other member of the Total Utilities Group, which engages with the Client or provides Services or is a Consultant; and “TUMG” shall have a corresponding meaning.
- 1.11. **“Variation”** shall mean a change (formal or informal) or amendment to the Terms of an existing Agreement. Such variation may be to elements such as the scope, work, project, services, payment terms or deadlines and shall not be construed as a replacement but rather a modification of specific aspects of the original Contract.

2. APPLICABILITY

- 2.1. Unless otherwise agreed in writing by TUMG, all quotes, Information or communications surrounding or preceding a Purchase Order or signed quote acceptance, including whether oral or in writing, for the supply of Goods by TUMG to the Client shall be construed as an expression of acceptance to be governed by these terms and conditions (Terms) and shall replace all agreements previously reached between the Parties.
- 2.2. These Terms may only be amended, cancelled, or waived in whole or in part with TUMG’s express consent in writing by a duly Authorised

Person and shall prevail to the extent of any other inconsistency with any other document or Agreement between the Client and TUMG including the Client’s own Terms of Trade, or Terms of Conditions of Purchase or contract or other document. By supplying Goods to the Client, the Client shall be deemed to have accepted these Terms, unless we have agreed in writing and signed by an Authorised Person of TUMG to contract with you on a different basis than as set out in these Terms. TUMG expressly rejects any additional, inconsistent, or conflicting terms proposed by the Client. Clerical errors are subject to correction in all cases.

- 2.3. None of TUMG agents, 3rd Parties, Generator Retailer (Gen Tailers), Retailers or VAR (Value Added Retailer) or other staff are authorised to make any representations, statements, conditions, or Agreements unless expressly authorised by an Authorised Person in writing and nor shall TUMG be bound by any such unauthorised statements, waiver, or variation.
- 2.4. Nothing contained or implied in these Terms, or any Agreement will create the relationship of employer and employee or principal and agent between TUMG and the Supplier.
- 2.5. The Client engages the Consultant to provide the Services described in the agreement and the Consultant agrees to perform the Services for the remuneration provided in the agreement.
- 2.6. Both Parties agree to be bound by the provision of the
- 2.7. Conditions of Engagement (overleaf), including clauses 4 Mutual Confidentiality and 5 Disclosure Required by Law and any variations from time to time or noted below.

3. INFORMATION

- 3.1. In the context of any contracted relationship Information means all information relating to the past, current or future affairs of the Discloser which the Recipient is given, has access to, or which comes to the knowledge of the Recipient in connection with any Consultancy or Project service(s), and which the Recipient is told is confidential or which from its nature and content is or would reasonably be expected to be confidential, including:
 - a) Information relating to the business interests of the Discloser including without limitation its business plans, marketing plans or supplier/customer details, expectations or intentions.
 - b) Information relating to the financial position or prospects of the Discloser.
 - c) All intellectual property (whether registered or not, in the process of registration or unregistrable) of the Discloser.
 - d) The details or fact(s) of any Professional Services or Project; and
 - e) The existence and contents of this Agreement, but does not include information which is or becomes publicly available other than by reason of the Recipient or any third party breaching this Agreement, or any other obligations of confidentiality owed by it to the Discloser; or (can be established by written record to have been: in the Recipient’s possession at the time of disclosure to the Recipient and not acquired (directly or indirectly) from the Discloser, or from any third party in breach of obligations of confidentiality owed by it to the Discloser. received by the Recipient from a third party who is not in breach of obligations of confidentiality owed by it to the Discloser; or independently developed by the Recipient without the use of the Discloser’s Information.

4. MUTUAL CONFIDENTIALITY

Recipient undertakings:

- 4.1. In consideration for the Information being made available for any Project, each party (as Recipient) undertakes for the

benefit of the other party (as Discloser) that, subject to this clause it will:

- a) Not disclose the Information to any person other than its Related Persons, and then only on a “need to know” basis.
- b) Maintain the secrecy and confidentiality of the Information including taking all action reasonably necessary to prevent any unauthorised person gaining access to it;
- c) Not use, or copy, the Information for any purpose other than the Project.
- d) Be wholly responsible for the conduct of its Related Persons in respect of any Information disclosed to them by it;
- e) Maintain a record of the location of the Information including and as reasonably practicable maintain a list of all the persons who will be, have been or are intended to have access to the Information; and
- f) Comply with all other obligations of the Recipient set out in any Project.

The Recipient will:

- 4.2. Ensure that all Related Persons to whom Information is disclosed is or are aware of and observe the provisions of the terms of this Agreement as if they were a party to it; and
- 4.3. Maintain records of all persons to whom it discloses Information and provide copies of such records to the Discloser promptly upon request.

5. DISCLOSURE REQUIRED BY LAW

- 5.1. If the Recipient or one of its Related Persons is required by any applicable law, court or authority, or by any applicable stock exchange listing rules, to disclose Information to any person, it will:
 - a) Give the Discloser prompt written notice of the disclosure, where practicable before it occurs, so that the Discloser has sufficient opportunity to prevent the disclosure through appropriate legal means.
 - b) Disclose only that part of the Information which the Recipient’s legal advisers consider is legally required to be disclosed; and
 - c) Use all reasonable endeavours to obtain an assurance that the Information disclosed will be treated confidentially by the recipient.

6. INTELLECTUAL PROPERTY

- 6.1. Neither the Agreement nor the transfer of Information under it is to be construed as granting to a Recipient any right, licence, ownership or interest in all or any part of the Information disclosed.
- 6.2. Where the Client is to supply TUMG with any designs, specifications, financial, supplier or other information it shall always be responsible for providing accurate data. TUMG shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied specifically by the Client.
- 6.3. The Client acknowledges, consents and assigns to TUMG by way of assignment of future copyright, all copyright in all development, software, programs or other works or materials which may be produced in the course of, or in connection with the provision of the Goods including but not limited to all rights to patents, trademarks and trade secrets and that it will not at any time acquire any right, title or interest in any kind in TUMG’s Intellectual Property or the Development IP.

7. Return of Information

- 7.1. When and as each Project comes to an end, or otherwise upon receipt of a written request from the Client or Discloser, the Recipient will promptly return to the Discloser or destroy (as the Discloser may require) all the Information (including any copies of the Information) in the possession or control of the Recipient, together with all information and documentation in any way relating to the Information, and confirm in writing that it has done so, provided that a Recipient is not required to return or destroy:
 - a) its board papers, minutes of its board (or of a committee of its board) which refer to or contain Information, provided that it keeps such Information secure and makes it available solely for internal governance and audit purposes; or
 - b) documents that are created or retained by any adviser of the Recipient where those documents are required to be held by law or for the purposes of compliance with any professional standards or insurance policies applicable to the adviser.

8. SECURITY OF CLIENT DATA

- 8.1. In relation to the performance of its obligations under this agreement, Total Utilities will, and will ensure that its employees, agents and subcontractors are fully aware of and will, always comply with the Privacy Law.
- 8.2. Our clients’ data remains their property. Total Utilities shall maintain adequate safeguards to protect our client’s data which Total Utilities holds against any destruction, loss, access or alteration and may only use that data for the sole purpose of carrying out its obligations under this agreement, and then only to the extent necessary, unless prior written approval has been given by our client.
- 8.3. Total Utilities undertakes it will not:
 - a) copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of our client’s data or relay or disseminate the same to any third party; and
 - b) not provide our client’s data to (or allow the provision of this data to, or access to the data by) any agents or subcontractors of Total Utilities without the prior written consent of the client.

9. DELIVERY OF GOODS

- 9.1. Unless otherwise agreed, Delivery of the Goods shall occur at the time that:
 - a) The Client’s personnel or The Clients nominated Person takes possession of or receives the Goods, including but not limited to receiving physical Goods, Services or a benefit of any kind, recommendation(s), whether orally, email, or through formal presentation. Proof of delivery thereof shall not specifically be required for delivery to have taken place.
 - b) TUMG may deliver the Goods in separate instalments and generally invoices based on the terms of any specific Project Agreement, however at its discretion TUMG also reserves the right to charge for its Project work completed during any retrospective 4-week (1 month) period or on delivery of the Project in full.

10. PRICE AND PAYMENT

- 10.1. The price and all costs are valid for 30 days from the date specified
- 10.2. All costs exclude GST and disbursements, unless otherwise specified in writing.
- 10.3. Payments are to be made in full and without deduction by way of setoff, counterclaim or otherwise not later than the 20th of the month

following invoice or 30 days after invoice whichever shall be the earliest.

- 10.4. For a variety of reasons, some instructions are not completed. If this occurs, TUMG reserves the right to charge the Client for the work undertaken and the costs incurred up to the time of termination as specified in its Agreement with the Client or at its then current rate(s).
- 10.5. Where indicated the Project scope may reflect a time and cost estimate only, in that instance costs must be used as a guide, not a quote or maximum fee.
- 10.6. Any expenses, disbursements and legal costs incurred by TUMG in the enforcement of any rights contained in these Terms and Conditions shall be paid by the Client, including without limitation any solicitor fees or debt collection agency fees.
- 10.7. If the customer fails to pay the full amount of any invoice by the due date for payment, then, without limiting any of Total Utilities' rights, the customer will pay default interest on the amount outstanding at the default rate, calculated from the due date until the date of payment (inclusive). Default rate means the then current 90-day bank bill buy rate (expressed as a percentage) as quoted by Total Utilities' principal bankers on the first Business Day of the period in which default interest is payable plus 10% per annum compounded monthly.
- 10.8. If the Client disputes any amount payable under an invoice, then the client must give Total Utilities notice within 10 business days of the date of the invoice identifying the amount in dispute and giving full reasons for the dispute. Total Utilities will investigate the Client's dispute as quickly as possible. In the event the parties are unable to resolve the dispute, the matter will be resolved in accordance with clause 14. Notwithstanding the dispute, the customer must pay in full the undisputed amount of the invoice on the due date set out in the invoice. If the customer fails to pay the undisputed amount by the due date, then Total Utilities may remotely disconnect any equipment or terminate or put on hold indefinitely any Project until payment is received.
- 10.9. Unless otherwise agreed, the Price will be determined by TUMG in its sole discretion as the maximum of:
 - a) the Price as indicated on the Client's Purchase Order provided to TUMG; or
 - b) the Price as at the date of delivery of the Goods according to the TUMG's current price list; or
 - c) The TUMG's quoted price (subject to clause 10.2) as at the date of delivery.
- 10.10. TUMG reserves the right to change the Price:
 - a) if a variation to the Goods which are to be supplied or scheduled (including any applicable plans or specifications) is requested by the Client; or
 - b) where additional Goods are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to third party costs outside of their reasonable control, safety considerations, a change of design etc.) which are only discovered on commencement of the supply of the Goods; or
 - c) in the event of increases to the TUMG's cost of labour or materials which are beyond TUMG's reasonable control.

11. Agreement Construction Generally

- 11.1. In any Agreement, unless the context otherwise requires:
 - a) the singular includes the plural and vice versa; and a reference to:
 - (i) a clause or party is a reference to a clause of, and a party to, the Agreement.
 - (ii) legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

- (iii) "Conduct" shall include an omission, act, statement and undertaking, whether or not it is in writing.
- (iv) "including" means "including but not limited to" and "include" and "includes" have corresponding meanings.
- (v) As context may prevail a "Person" includes a partnership and a body of persons, whether corporate or unincorporated; and each shall be jointly and severally liable as the Client or "Party"; and "Either Party" includes that party's successors and legal personal representatives.

11.2. Where any provision of an Agreement is expressed to be for the benefit of any person other than a Party, such provision is intended to confer a benefit on such Person and shall be enforceable at the suit of that Person, in terms of the Contracts (Privity) Act 1982.

11.3. The obligations in an Agreement are considered reasonable by the Parties and necessary for the protection of a Discloser's legitimate interests in the Information. If any of the obligations are found to be void or voidable but would be valid and enforceable if some part or parts were deleted or amended, they will apply with such modifications as may be necessary to make them valid and enforceable. If such modification is not possible then the relevant provisions are to be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.

11.4. The Parties acknowledge now and into the future that an Agreement will not be deemed to create a partnership, joint venture or agency relationship of any kind.

12. Conditions of Engagement

- 12.1. The Consultant shall perform the Consultancy Services as described by the Project and any attached or supporting documents received.
 - a) Nothing in the Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.
 - b) The Client and the Consultant agree that where all, or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services.
 - c) In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional.
 - d) In instances where TUMG or their consultant provide a referral to a 3rd Party, the Client agrees that this is done in good faith however TUMG shall have no obligation or liability for the outcome of such referral actions, Projects, Goods or Services.
 - e) The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.

- f) The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a Variation the Consultant shall notify the Client as soon as practicable, including if such Variation adjusts the scope or Costs of the Project.
- g) The Client shall pay the Consultant for the Consultancy Services the fees and expenses at the times and in the manner set out in these terms and Conditions or in accordance with the Project documents. Where the Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under the Agreement.
- h) Unless there is a valid dispute about the Price and Payment, you agree to pay the total amount shown on each invoice. In the case of a valid dispute (refer clause 14) about the Price and Payment you must make payment in accordance with clause 10.3. Once the Dispute is resolved, and:
 - (i) the disputed amount is found to be due by TUMG to you the Client, we will credit your account with that amount; or
 - (ii) the disputed amount is found to be due by you the Client to TUMG, you will pay that amount within 14 days of the dispute being resolved.
 - (iii) If you do not pay TUMG within the 14-day period, or you do not make payments of any amounts not in dispute, these amounts will be treated as overdue.
- i) TUMG and its consultants shall not be liable to the Client under the Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
- j) The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$NZ500,000.
- k) Without limiting any defences, a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- l) Neither party shall be liable under the agreement for any indirect or consequential loss (including loss of profits) arising in connection with any act or omission of that party, or any of its employees, agents or contractors. Total Utilities will obtain and maintain in force, at its own expense and with reputable insurance firms, all insurances required by law and good industry practice for the proper carrying out of its obligations under the agreement, including but without limitation:
 - (i) Public liability insurance for a minimum cumulative sum during any calendar year of \$2,000,000; and
 - (ii) Professional indemnity insurance for a minimum cumulative sum during any calendar year of \$4,000,000.
 - (iii) Total Utilities shall, upon request, provide certificates of insurance from its insurers confirming that the insurances required by this agreement have been put in place.
- m) If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable

Party shall only be liable to the proportional extent of its own contribution.

- n) Neither the Agreement nor the transfer of Information under it is to be construed as granting to a Recipient any right, licence, ownership or interest in all or any part of the Information disclosed.
- o) Further to clause 10.4 the Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

13. HEALTH & SAFETY

- 13.1. The Parties must comply with all health and safety legislative requirements, including the Health and Safety at Work Act 2015 (HSWA) and all related legislative instruments, guidance, and codes of practice. These obligations include, but are not limited to, the Clients obligations under section 39 of the HSWA.
- 13.2. The Consultant has not and will not assume any obligation as the Client's Agent or otherwise which may be imposed upon the or by the Client from time to time pursuant to the Health and Safety in Employment Act 1992 ("the Act") arising out of this engagement. The Consultant and Client agree that in terms of the Act, the Consultant will not be the person who controls the place of work.
- 13.3. The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

14. Disputes

- 14.1. The parties intend that any difference between them concerning any specific Project Agreement ("difference") will be resolved amicably by good faith discussion between operational staff.
- 14.2. If any difference is not resolved by discussion between operational staff within 10 business days of the difference arising, the matter will be referred to Authorised Persons of each party for resolution.
- 14.3. If the difference cannot be resolved by the Authorised Persons within 10 business days of the matter being referred to them, either party may require the matter to be referred to mediation.
- 14.4. The referral to mediation shall be commenced by a party serving written notice on the other party stating the subject matter and details of the difference and requiring the difference to be referred to a mediator to be appointed by the parties. If the parties are not able to agree on the appointment of a mediator within 5 business days of the date of service of the written notice, the mediator shall be appointed at the request of either party by way or a sole arbitrator under the Arbitration Act 1996 or by the chairperson for the time being of the New Zealand Law Society.
- 14.5. The guidelines which shall govern the mediation shall be agreed by the parties, or, failing agreement within 5 business

days after the appointment of the mediator, shall be set by the mediator.

- 14.6. Nothing in this clause will preclude either party from taking immediate steps to seek urgent injunctive or equitable relief before an appropriate court.
- 14.7. At the sole discretion of Total Utilities any matter that has by either agreement or action or inaction of either Party and has for any reason not been escalated for resolution by mediation or arbitration and is believed to have stalled or prevaricated shall after the passing of not less than six (6) months be deemed to have been resolved.

- i) By engaging with Total Utilities or TUMG so shall accept any order from the Client, The Parties agree to be bound by these terms and that you the Client are a duly authorised representative of the Client company and so permitted to execute engage with TUMG under these terms and execute any subsequent Project to this Agreement.

15. General

15.1. The Agreement:

- a) contains the entire understanding between the parties, superseding all prior or contemporaneous communications, agreements, and understandings between the parties, with respect to the disclosure and protection of Information in connection with the Project; and
- b) applies with respect to all Information received by the Recipient in connection with the Project, whether received prior to or after the date of the Agreement; and
- c) takes precedence over any specific legends or statements associated with any Information when received.
- d) Neither party will be liable for any act, omission or failure to fulfil its obligations, under this Agreement if such act, omission, or failure arises from any cause, reasonably beyond its control including but not limited to equipment breakdown, pandemic, natural disasters (fire, storms, floods), governmental or societal actions (war, invasion, civil unrest, labour strikes), and infrastructure failures (transportation, energy) **“Force Majeure”**. The party unable to fulfil its obligations will immediately notify the other in writing of the reasons for its failure to fulfil its obligations, any damage or loss caused (or likely to be caused) and proposed remedial action.
- e) The failure by TUMG to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it prejudice TUMG’s right to subsequently enforce that provision or exercise any right or remedy unless expressly waived by TUMG in writing. If any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- f) TUMG reserves the right at any time to update any Terms referenced in this Agreement by means of its website to reasonably reflect the forward evolution of its operating processes and procedures to remain relevant and in line with industry standards. A current set of terms is available to the Client at <https://totalutilities.co.nz/> or on request and it shall be the Clients obligation to ensure they are aware of and accord themselves in accordance with this intent.
- g) Except to the extent otherwise agreed by the parties in writing, the obligations set out in the Agreement are on-going and will survive completion or termination of the Project.
- h) The Agreement is governed by and is to be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the New Zealand courts in all matters relating to the Agreement.