

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 as reasonably conferred with Total Utilities Management or having issued instructions, how so they have been received.
- 1.2. **“Agreement”** These Terms and Conditions together with a Panoramic Power Agreement are intended to form part of any Clients engagement with Total Utilities 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. **“Bridge”** and **“Bridge Unit”** shall mean the Data Communication device that is able to communicate through 4 pathways being Ethernet (LAN), WiFi, Modbus and Cellular 4G (LTE) the **“Connection”** or **“Data Connection”** or **“Data Communication”** shall be interchangeable terms.
- 1.4. **“Client”** and **“Customer”** means you, your successors and assignees or subject matter expert or any person receiving, acting, relaying, or benefiting from our products or services or receiving benefit, either directly or indirectly in exchange for costs or subject to a purchase order or instruction of any kind, such terms shall be interchangeable as may be required.
- 1.5. **“Goods”** shall mean all goods and equipment including hardware 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 Total Utilities Management at the Clients request from time to time.
“Product” and **“Project”** shall have a corresponding meaning.
- 1.6. **“Modbus”** shall mean a communication protocol used in the field of industrial automation to carry data message structure(s) between compatible devices.
- 1.7. **The “Connection”** shall mean the enabled communication protocol being either Ethernet (LAN), WiFi, Modbus and Cellular 4G (LTE). Cellular availability is subject to network coverage. Also refer clause 9 - Interruptions.

2. APPLICABILITY

- 2.1. These Agreement Terms are intended as a supplementary to be and shall be read in conjunction with Total Utilities Professional Services Standard Terms and Conditions
<https://totalutilities.co.nz/legal/>
- 2.2. By supplying Goods to you, 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 Total Utilities Management to contract with you on a different basis than as set out in these Terms. Total Utilities Management expressly rejects any additional, inconsistent, or conflicting terms proposed by the Client.
- 2.3. Unless otherwise agreed in writing by Total Utilities Management, 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 Total Utilities Management 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.
- 2.4. These Terms may only be amended, cancelled, or waived in whole or in part with Total Utilities Management’s express consent in writing by a duly Authorised Person and Total

Utilities Management’s Agreement shall prevail to the extent of any other inconsistency with any other document or Agreement between the Client and Total Utilities Management 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 Total Utilities Management to contract you on a different basis than as set out in these Terms. Total Utilities Management expressly rejects any additional, inconsistent, or conflicting terms proposed by the Client. Clerical errors are subject to correction in all cases. Clerical errors are subject to correction in all cases

3. SUPPLY OF EQUIPMENT

- 3.1. Total Utilities will supply equipment for the purposes of energy monitoring, and the customer will lease all equipment specified in the main terms at the sites for the term of that agreement.
- 3.2. The customer will take the equipment for its own use and will not provide access to third parties, unless expressly agreed otherwise with Total Utilities.
- 3.3. Unless stated in the supply equipment contract specific terms, Total Utilities retains full ownership of the equipment.

4. SITES

- 4.1. Total Utilities will supply the equipment to the sites as set out in the site schedule. Subject to clause 2.2, Total Utilities shall have no obligation to supply equipment to any other site occupied by the customer.
- 4.2. The customer may, at any time, give 30 days’ written notice to Total Utilities requesting that:
 - (a) a site be added to the site schedule; or
 - (b) a site be removed from the site schedule because the customer no longer owns, or carries on business at, that site.
- 4.3. Where Total Utilities approves any such request in writing (such approval will not be unreasonably withheld), the relevant site will be added to, or the relevant site will be removed from, the site schedule as it may be applicable to do so.
- 4.4. Removal of equipment shall be carried out by a registered electrical contractor and shall be the sole responsibility of the customer. Total Utilities shall not be responsible for removal and deinstallation costs or return shipping costs. Total Utilities will continue to invoice the customer any monthly lease charges until such time as the hardware is returned.
- 4.5. Further to clause 7.6 Total Utilities reserve the right to charge its costs for any loss or damage to the equipment howsoever that might occur during installation, removal or deinstallation.
- 4.6. The fees or charges payable for equipment at any additional site will be provided to the customer by Total Utilities in a pricing schedule specific to the additional site.

5. TERM

- 5.1. These Terms together with any Panoramic Power Agreement shall commence on the start date and will continue until the expiry date, unless terminated earlier in accordance with the terms of the Agreement.
- 5.2. For the avoidance of doubt, the Panoramic Power Agreement can only be terminated prior to the expiry date of the Panoramic Power

contract specific agreement in accordance with clauses 4.2(b), 14.5 and 15.

6. SCOPE

- 6.1. The scope, design or metering plan “the Plan” specific to the installation requirement shall be prepared by Total Utilities and agreed with the Client prior to Installation. The Plan shall be based on a site visit and all relevant and material site knowledge and knowhow being provided by the Client or their subject matter expert. TUMG shall reasonably be able to rely on the information provided by the Client to be accurate and complete and model the site electrical reticulation. The site and wiring drawing(s) provided by the Client will assist in developing and documenting the Plan.
- 6.2. During installation any variation or modification required due to error, mistake or discovery shall be discussed and agreed with the Client at the time.
- 6.3. Any such variation or modification required to the Goods may be at the Clients’ cost and based on Total Utilities’ usual charges.

7. DELIVERY

- 7.1. Unless otherwise agreed, Delivery of the Goods shall occur at the time that:
 - The Clients personnel or their nominated carrier takes possession of the Goods at the Clients’ address; or
 - Failing such naming of a carrier the Client (or the Client’s nominated carrier) for the purpose of transmission to the Client, Total Utilities delivers the Goods to Client nominated address and a clearly identified or signed receipt being proof of delivery thereof is obtained.
- 7.2. Responsibility and risk of all equipment will pass to the customer when the equipment reaches the relevant point of installation.
- 7.3. The customer agrees that any additional costs associated with delivery not allowed for in the specific agreement will be met by the customer.

8. INSTALLATION

- 8.1. The customer will follow all Panoramic Power instructions and guidelines regarding the installation of current sensors, power meters, current transformers and other electrical hardware.
- 8.2. The customer will be liable for all costs associated with installation carried out by a registered electrical contractor.
- 8.3. Unless otherwise agreed, the customer is responsible for nomination of the registered electrical contractor and project management of the installation.
- 8.4. Total Utilities will provide training to the nominated electrical contractor, outlining specific installation requirements and providing installation instructions.
- 8.5. The customer agrees to provide site access for installation of the equipment in conjunction with the nominated electrical contractor.
- 8.6. The customer will provide a safe, secure and accessible location at its sites for the installation of equipment and any other equipment as required, including reasonable protection for their Health & Safety in accordance with the HSAW Act 2015 with and against interference and damage. The customer will not interfere or permit interference with any metering equipment or other equipment or cause any loss or damage to

any metering equipment or other equipment. The customer will be responsible for and any damage caused to any metering equipment or other equipment by its negligence or wilful act or omission or through its failure to provide such protection and will be charged for any loss or damage of such negligence, act, omission or failure.

- 8.7. The customer will be responsible for making available the Connection using the appropriate enabling connectivity other than cellular. However, cellular coverage is a prerequisite requirement for cellular connectivity.
- 8.8. The Customer shall be responsible for WiFi connection to the internet for the purposes of Installation as may be required.

9. INTERRUPTIONS

- 9.1. The measurement of energy data under this agreement may not be continuous or uninterrupted. Should energy supply be interrupted, the recording of data will be suspended until energy supply resumes.
- 9.2. Notification of planned energy outages should be provided by your energy retailer.
- 9.3. Subject to clauses 4 and 7, should you the Customer require the equipment to be relocated or changed for maintenance purposes, recording of data may be interrupted.

10. MEASUREMENT

- 10.1. The equipment takes its measurement approximately every 10 seconds relaying the data to the Bridge Unit which in turn sends a data signal at 10 second intervals to Panoramic Power’s cloud database. Measured data is available approximately 20 seconds post usage. This is dependent on the availability of the Data Connection to the internet using either Modbus or Ethernet (hardwired) or WiFi, connected by the client or on board Cellular, collectively the “Connection(s)”. The Connection can drop for periods of time which maybe outside of the Parties reasonable control. The Bridge has a limited ability to hold data which is uploaded when connection is restored.
- 10.2. When connectivity is restored. It is recommended that Bridge disconnect alerts are configured and assigned to a nominated person(s) onsite.
- 10.3. Accuracy of data measurement is +/- 2% as published by Panoramic Power. Defined accuracy is in accordance with proper installation as advised by Panoramic Power.
- 10.4. All data measured by Panoramic Power will remain the property of the customer.

11. CHARGES

- 11.1. The customer will pay Total Utilities the charges for the equipment and other services supplied under this agreement.
- 11.2. If Total Utilities supplies other services to the customer, the customer will pay the appropriate charge for such other services in accordance with a quoted price for services as required.
- 11.3. The charges specified in the price schedule are exclusive of GST, which will be added to and payable in respect of each invoice for equipment and services supplied.
- 11.4. The customer agrees and acknowledges that Total Utilities may pass through any optimized subscription charges, data export and custom report costs. And that these charges may change during the term of this agreement. Any change to these charges will be notified in writing as soon as reasonable practicable but no later than 30 days prior to the change in cost.

12. INVOICES AND PAYMENT

- 12.1. Total Utilities will send the customer an invoice for the equipment each month (and, where relevant, any charges which have become due and payable for the previous billing month(s)). The customer will pay the full amount set out on the invoice on the due date set out in that invoice, using the payment method agreed in writing with Total Utilities.
- 12.2. 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.
- 12.3. For a variety of reasons, some instructions are not completed. If this occurs, Total Utilities reserves the right to charge the Client for the work undertaken and the costs incurred up to the time of termination.
- 12.4. Total Utilities will invoice the customer from the date the Service commences in relation to the contract specific terms. This would generally start from the date the Goods are dispatched to the customer for installation.
- 12.5. If the customer fails to pay the full amount of any invoice by the due date for payment, then, without limiting any of the 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.
- 12.6. 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.

13. LIABILITY

- 13.1. Further to clause 7 Total Utilities does not accept any liability or responsibility of any kind for the installation of the equipment.
- 13.2. Notwithstanding anything to the contrary herein, Total Utilities will have no liability whatsoever for the customer (whether in contract, tort, indemnity (including without limitation, negligence), breach of statutory duty or otherwise) for:
 - a) Any pure economic loss, loss of profits, loss of revenue, loss of opportunities, loss or depletion of goodwill, diminished stock price, replacement goods, business interruption, lost data, interruption of data services; or
 - b) Any Indirect, special or consequential losses, whether such losses were reasonably foreseeable or not.
- 13.3. Without prejudice to clause 12.2, Total Utilities' liability under or in connection with this Agreement shall be limited to the aggregate amounts paid for Products and/or Data Services which are the subject of such claim or action during the twelve

(12) months immediately preceding the date of such claim. These limitations on Total Utilities' liability shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty.

- 13.4. Nothing in this clause 12 shall exclude or limit Total Utilities liability for death or personal injury caused by Total Utilities negligence or for fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful for Total Utilities to exclude or restrict from its ordinary liability.

14. WARRANTIES

14.1. Total Utilities warrants that:

- a) all equipment meets New Zealand electrical requirements and is approved under CTick and CE certification.
- b) the equipment is in working order at the date of shipment.

- 14.2. If at any time Total Utilities considers the equipment faulty or if the customer notifies Total Utilities that it considers such metering equipment to be faulty. The customer shall permit Total Utilities to suspend measurement to permit testing.

- 14.3. If the customer requests Total Utilities to test any metering equipment pursuant to clause 13.2 and:

- a) the equipment is found not to be faulty; the customer will be liable for the costs of the test and any other reasonable costs incurred by Total Utilities in connection with the test; or
- b) the equipment is found to be faulty; Total Utilities will replace or repair such equipment as necessary and will make any necessary adjustment to the charges.

- 14.4. If the equipment has been installed incorrectly or is found to be damaged the customer will be liable for any costs associated with rectifying the hardware or installation.

14.5. The Customer warrants that:

- a) It has the power and authority to enter and comply with its obligations under this agreement.
- b) the person or persons entering into or executing any Agreement on behalf of the customer are duly authorised by the Customer to bind the Customer in relation to the Customer's obligations under this agreement.

15. FORCE MAJEURE

- 15.1. If either party is unable to carry out any of its obligations under this agreement because of a force majeure, this agreement will remain in effect but, except as otherwise provided, that party's obligations will be suspended without liability (other than an obligation to pay money) for a period equal to the period of the force majeure.
- 15.2. A party claiming the benefit of this clause (the "claiming party") must give the other party written notice of the event of force majeure as soon as practicable after that event or circumstance occurs specifying the cause and extent of its inability to perform any of its obligations under this agreement and the likely duration of such non-performance.
- 15.3. Within 5 business days of receiving any notice under clause 14.2, the other party must notify the claiming party whether it accepts that a force majeure exists or whether it wishes to dispute the claim. Failure to give such notice will be deemed acceptable by the other party.
- 15.4. The claiming party must take all reasonable steps to remedy or limit the event of a force majeure. Performance of any obligation affected by a force majeure will be resumed as soon as reasonably possible after the termination or abatement of the force majeure.

- 15.5. If by reason of a force majeure, Total Utilities are unable to supply services or the customer is unable to take supply of services for a continuous period of 30 business days in any 12month period, the other party may cancel this agreement immediately by giving written notice to the claiming party.

16. TERMINATION

- 16.1. Either party may terminate this agreement immediately by giving written notice to the other party if a party:
- a) breaches, or fails properly or promptly to perform, any material obligation under this agreement and fails to remedy the breach or performance within 30 business days after receiving written notice from the other party thereof; or
 - b) suspends or ceases its primary, or all of its, business activities for more than 10 consecutive business days; or
 - c) is, becomes, or is deemed to be, insolvent or bankrupt; or
 - d) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors; or
 - e) goes into receivership or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its property; or
 - f) has any resolution passed, or any proceeding commenced, for the winding up or liquidation of that party.
- 16.2. Total Utilities may terminate this agreement or remotely disconnect all or any of the Goods and equipment for any reason and without terminating this agreement at any time by giving written notice to the customer if:
- a) the customer fails to pay any amount owing to this agreement by the due date for such payment; or
 - b) a change of control occurs in respect of the customer; or
 - c) Total Utilities is concerned at any time (on reasonable grounds) about the customer's ability to pay their debts as they fall due; or
 - d) the customer is repeatedly late in paying any amounts due under this agreement.
- 16.3. On termination of this agreement, Total Utilities requires all equipment to be returned at the customer's expense to Total Utilities and in good working order within 30 days. A failure to return any equipment or returning damaged equipment will incur a fee equivalent to 6 months' total of the charges for the applicable equipment.
- 16.4. If the customer continues to use the equipment after the expiry date and the customer has not given Total Utilities notice in writing terminating this agreement, the terms of this agreement shall apply in full force and effect except that:
- 16.5. the charges payable by the customer in respect of the equipment and other services after the expiry date shall be at uncontracted rates; and
- 16.6. this agreement shall thereafter be terminable by either party on not less than 30 days' notice in writing.
- 16.7. Termination of this agreement will not operate as a waiver of any breach of this agreement and will be without prejudice to any rights, liabilities or obligations of either party which have accrued up to the date of termination.

17. CONFIDENTIALITY AND INFORMATION

- 17.1. The customer shall as soon as reasonably practicable provide such information as Total Utilities reasonably requires enabling

Total Utilities to properly perform its obligations under this agreement.

- 17.2. Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make any disclosure or use, or allow any disclosure or use to be made, of any provision of this agreement or of any information relating to any provision, or the subject matter, of this agreement, or any information directly or indirectly obtained from the other party under or in connection with this agreement.

18. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

18.1. Security Interest:

The Customer acknowledges and agrees that:

- a) A Panoramic Power Agreement constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 (PPSA); and
- b) A security interest is taken in all Goods supplied by Total Utilities to the Customer and in all present and after acquired personal property supplied by Total Utilities to the Customer and any proceeds of such Goods.

18.2. Registration:

The Customer agrees to:

- a) Do all things, including executing any documents, providing all necessary information and cooperating fully with Total Utilities to ensure that Total Utilities has a perfected first ranking security interest in the Goods and to enable Total Utilities to register that interest under the PPSA;
- b) Not register a financing charge statement or make a demand to alter the financing statement pursuant to section 162 of the PPSA without Total Utilities's prior written consent.

18.3. Waiver of Rights:

- a) To the extent permitted by law, the Customer waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131 and 133 of the PPSA, and the Customer's rights to receive any verification statement under section 148.
- b) The Parties agree that they will not disclose any information of the kind referred to in section 177 of the PPSA unless required by law.

19. HEALTH AND SAFETY

- 19.1. The Client 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.
- 19.2. The Client will, and will ensure that its employees, agents, contractors and subcontractors, assigns or nominee (if any), comply at all times with all reasonable directions of Total Utilities and will notify Total Utilities of any identifiable hazards which come to its attention in relation to the purchase of Goods.
- 19.3. The Client will provide all reasonable assistance to Total Utilities in relation to any investigation (whether conducted by the Client, Total Utilities, or a regulatory agency) into a notifiable event at no cost to Total Utilities.
- 19.4. The Client will notify Total Utilities of any improvement or prohibition notice, enforcement proceedings or prosecution under

Health and Safety Legislation against the Client in relation to work done under these Terms or any contract between the Parties.

- 19.5. The Client will, to the extent permitted by law, indemnify Total Utilities in respect of any claims brought against Total Utilities resulting from any breach by the Client of its obligations under any Health and Safety Legislation, and/or any failure by the Client to comply with its obligations under this clause.

20. GENERAL

- 20.1. The customer may not assign, transfer or otherwise dispose of any of its rights or interest under this agreement without the prior written consent of Total Utilities, which may be withheld in the absolute discretion of Total Utilities.
- 20.2. No amendment to this agreement will be effective unless it is in writing and signed by both parties.
- 20.3. Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party to obtain the full benefit of this agreement according to its true intent
- 20.4. A waiver of any provision of this agreement will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by any party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.
- 20.5. Each party shall pay its own costs of, and incidentals to, the negotiation, preparation, and execution of the Agreement.
- 20.6. A Panoramic Power Agreement may be executed in any number of counterparts (including facsimile copies) and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties.
- 20.7. If any provision of the Agreement is, or becomes, unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this Agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 20.8. By engaging with Total Utilities or Total Utilities 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 Total Utilities under these terms and execute any subsequent Project to this Agreement.
- 20.9. This agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.