
New Era Tiling Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 “NET” means New Era Tiling Limited, its successors and assigns or any person acting on behalf of and with the authority of New Era Tiling Limited.
- 1.2 “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by NET to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Works as agreed between NET and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with NET’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and NET.
- 2.3 These general terms and conditions are meant to be read in conjunction with the applicable terms and conditions for hire services. If there are any inconsistencies between the relevant documentation, then the terms and conditions contained therein shall prevail.

3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Customer shall give NET not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by NET as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At NET’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by NET to the Customer in respect of Works performed or Materials supplied; or
 - (b) NET’s Price at the date of delivery of the Works according to NET’s current pricelist; or
 - (c) NET’s quoted Price (subject to clause 5.2) which shall be binding upon NET provided that the Customer shall accept NET’s quotation in writing within sixty (60) days.
- 5.2 NET reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to NET in the cost of labour or materials which are beyond NET’s control.
- 5.3 At NET’s sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by NET, which may be:
- (a) on completion of the Works; or
 - (b) before commencement of the Works; or
 - (c) by way of progress payments in accordance with NET’s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (d) for certain approved Customer’s, due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices;
 - (e) failing any notice to the contrary, the date specified on any invoice or other form as being the date for payment.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and NET.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to NET an amount equal to any GST NET must pay for any supply by NET under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of the Works

- 6.1 Subject to clause 6.2 it is NET’s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works’ commencement date will be put back and the completion date extended by whatever time is reasonable in the event that NET claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond NET’s control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify NET that the site is ready.
- 6.3 At NET’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

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- 6.4 The Customer must take delivery by receipt or collection of the Works whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Works as arranged then NET shall be entitled to charge a reasonable fee for redelivery and/or storage of Materials.
- 6.5 Any time or date given by NET to the Customer is an estimate only. NET shall not be liable for any loss or damage whatsoever due to failure by NET to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of NET.

7. Risk

- 7.1 If NET retains ownership of the Materials under clause 13 then:
- (a) where NET is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at NET's address; or
 - (ii) the Materials are delivered by NET or NET's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - (b) where NET is to both supply and install Materials then NET shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests NET to leave Materials outside NET's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 7.3 NET will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.
- 7.4 Whilst NET will take all due care to avoid contamination of the finished surface, NET accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite.
- 7.5 The Customer will only inspect or view a tiled floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.
- 7.6 The Customer acknowledges that Materials supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. NET will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 7.7 NET shall not be liable whatsoever for any loss or damage to the Works (including, but not limited to, painted surfaces) that is caused by any other tradesmen.
- 7.8 The Customer acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by NET to match colour, shade or grain of product, NET shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 7.9 NET gives no guarantee (expressed or implied) against hazing, crazing, cracking, chipping or scratching that may occur that is beyond NET's control due to the nature of the product at the time of installation, therefore it is recommended that the Customer allows for extra product for such breakages.
- 7.10 The Customer acknowledges and accepts that the Materials supplied by NET maybe subject to optical hazing, shadowing and sealer marking, which is a common manufacturing occurrence for these types of Goods and is strictly aesthetic. It is recommended that the Customer inspect the Materials (individually) prior to fixing, as NET shall not be liable for any loss or damage in this event.

8. Customer's Responsibilities

- 8.1 It is the Customer's responsibility to:
- (a) have all areas clean and clear of rubbish or other matter to enable scheduled work to be completed in accordance with the schedule of installation; and
 - (b) fully disclose any information that may affect NET's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa); and
 - (c) ensure the sub-floor is adequately ventilated and is structurally sound; and
 - (d) ensure that the levels of the sub-floor are satisfactory as the tiles can only follow the contours of the surface and will not correct unevenness; and
 - (e) supply power to within eight (8) metres of the project; and
 - (f) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between NET and the Customer, any additional costs will be invoiced to the Customer as an extra; and
 - (g) remove any trade waste resulting from the Works.
- 8.2 It is the intention of NET and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Works to be undertaken (where in NET's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 8.3 NET may at its discretion notify the Customer that it requires to store at the worksite Materials, fittings and appliances, or plant and tools required for the Works, in which event the Customer shall supply NET a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Customer's responsibility.

9. Accuracy of Customer's Plans and Measurements

- 9.1 NET shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, NET accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

10. Access

- 10.1 The Customer shall ensure that NET has clear and free access to the worksite at all times to enable them to undertake the Works. NET shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of NET.

11. Underground Locations

- 11.1 Prior to NET commencing any work the Customer must advise NET of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the 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 site.
- 11.2 Whilst NET will take all care to avoid damage to any underground services the Customer agrees to indemnify NET in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. Compliance with Laws

- 12.1 The Customer and NET shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 12.3 The Customer agrees that the site will comply with any occupational safety and health laws relating to building/construction sites and any other relevant safety standards or legislation.

13. Title

- 13.1 NET and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid NET all amounts owing to NET; and
 - (b) the Customer has met all of its other obligations to NET.
- 13.2 Receipt by NET 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to NET on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for NET and must pay to NET the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by NET shall be sufficient evidence of NET's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with NET to make further enquiries.
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for NET and must pay or deliver the proceeds to NET on demand.
 - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of NET and must sell, dispose of or return the resulting product to NET as it so directs.
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises NET to enter any premises where NET believes the Materials are kept and recover possession of the Materials.
 - (g) NET may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of NET.
 - (i) NET may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

14. Personal Property Securities Act 1999 ("PPSA")

- 14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Customer to NET for Services – that have previously been supplied and that will be supplied in the future by NET to the Customer.
- 14.2 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 NET may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, NET for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of NET; and
 - (d) immediately advise NET of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.

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- 14.3 NET and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by NET, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Customer shall unconditionally ratify any actions taken by NET under clauses 14.1 to 14.5.

15. Security and Charge

- 15.1 In consideration of NET agreeing to supply the Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Customer indemnifies NET from and against all NET's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NET's rights under this clause.
- 15.3 The Customer irrevocably appoints NET and each director of NET as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. Customer's Disclaimer

- 16.1 The Customer hereby disclaims any right to rescind, or cancel any contract with NET or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by NET and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgment.

17. Defects In Materials

- 17.1 The Customer shall inspect the Materials on delivery and shall within ninety (90) days of delivery (time being of the essence) notify NET of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford NET an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which NET has agreed in writing that the Customer is entitled to reject, NET's liability is limited to either (at NET's discretion) replacing the Materials or repairing the Materials.

18. Returns

- 18.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 17.1; and
 - (b) NET has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) NET will not be liable for Materials which have not been stored or used in a proper manner; and
 - (e) the Materials 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.
- 18.2 NET may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.
- 18.3 Non-stocklist items or Materials made or ordered to the Customer's specifications are under no circumstances acceptable for credit or return.

19. Warranties

- 19.1 Subject to the conditions of warranty set out in clause 19.2 NET warrants that if any defect in any workmanship of NET becomes apparent and is reported to NET within twenty-four (24) months of the date of delivery (time being of the essence) then NET will either (at NET's sole discretion) replace or remedy the workmanship.
- 19.2 The conditions applicable to the warranty given by clause 19.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Materials; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by NET; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and NET shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without NET's consent.
 - (c) in respect of all claims NET shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 19.3 For Materials not manufactured by NET, the warranty shall be the current warranty provided by the manufacturer of the Materials. NET shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

20. Consumer Guarantees Act 1993

- 20.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by NET to the Customer.

21. Intellectual Property

- 21.1 Where NET has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in NET, and shall only be used by the Customer at NET's discretion.
- 21.2 The Customer warrants that all designs, specifications or instructions given to NET will not cause NET to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify NET against any action taken by a third party against NET in respect of any such infringement.
- 21.3 The Customer agrees that NET may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which NET has created for the Customer.

22. Default and Consequences of Default

- 22.1 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 NET's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Customer owes NET any money the Customer shall indemnify NET from and against all costs and disbursements incurred by NET in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NET's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies NET may have under this contract, if a Customer has made payment to NET, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by NET under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 22.4 Without prejudice to any other remedies NET may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions NET may suspend or terminate the supply of Works to the Customer. NET will not be liable to the Customer for any loss or damage the Customer suffers because NET has exercised its rights under this clause.
- 22.5 Without prejudice to NET's other remedies at law NET shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to NET shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NET becomes overdue, or in NET's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent or bankrupt, 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.

23. Cancellation

- 23.1 NET may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice NET shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to NET for Works already performed. NET shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.2 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by NET as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.3 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

24. Privacy Act 1993

- 24.1 The Customer authorises NET or NET's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by NET from the Customer directly or obtained by NET from any other source, to 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.
- 24.2 Where the Customer is an individual the authorities under clause 24.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.3 The Customer shall have the right to request NET for a copy of the information about the Customer retained by NET and the right to request NET to correct any incorrect information about the Customer held by NET.

25. Dispute Resolution

- 25.1 All disputes and differences between the Customer and NET touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

26. Construction Contracts Act 2002

- 26.1 The Customer hereby expressly acknowledges that:
- (a) NET has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to NET by a particular date; and

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- (iv) NET has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if NET suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if NET exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to NET under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of NET suspending work under this provision.

27. General

- 27.1 The failure by NET to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect NET's right to subsequently enforce that provision. 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.
- 27.2 These terms and conditions 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.
- 27.3 NET shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by NET of these terms and conditions (alternatively NET's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.4 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 NET nor to withhold payment of any invoice because part of that invoice is in dispute.
- 27.5 NET may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 27.6 The Customer agrees that NET may amend these terms and conditions at any time. If NET makes a change to these terms and conditions, then that change will take effect from the date on which NET notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for NET to provide any Works to the Customer.
- 27.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.