

## Good Electrical Limited – Terms & Conditions of Trade

### 1. Definitions

- 1.1 "G.E.L." means Good Electrical Limited, its successors and assigns or any person acting on behalf of and with the authority of Good Electrical Limited.
- 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Works" means all Works or Materials supplied by G.E.L. to the Client at the Client'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 G.E.L. and the Client in accordance with clause 6

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with G.E.L.' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and G.E.L.
- 2.3 If for any reason (including the discovery of asbestos, defective structures, or dangerous access to roofing) G.E.L., or its employees reasonably form the opinion that the Client's premises is not safe for the installation of Materials and/or provision of the Works to proceed, then G.E.L. shall be entitled to delay all Works (in accordance with the provisions of clause 7.4) until G.E.L. is satisfied that it is safe for the Works to proceed.
- 2.4 Where the Client instructs G.E.L. to perform any repairs or other Works contrary to G.E.L.' recommendation, or where the Client does not act upon any other advice or recommendation given by G.E.L. in relation to the Works, then G.E.L. shall require the Client or their agent to authorise commencement of the Works in writing. G.E.L. shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the works.
- 2.5 The Client accepts and acknowledges that a minimum **call out fee** applies for any Works performed by G.E.L. Such call out fee shall be equal to one (1) hour's labour charge (within normal working hours) or two (2) hours' labour (outside of normal working hours) at G.E.L.' standard hourly labour rate, plus travel costs, plus parts.

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

### 5. Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to G.E.L. as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies G.E.L. in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise G.E.L. in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to G.E.L. for all additional costs incurred by G.E.L. (including G.E.L.' profit margin) in providing any Works, Materials, Works or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

### 6. Price and Payment

- 6.1 At G.E.L.' sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by G.E.L. to the Client in respect of Works performed or Materials supplied; or
  - (b) G.E.L.' quoted Price (subject to clause 6.2) which shall be binding upon G.E.L. provided that the Client shall accept G.E.L.' quotation in writing within thirty (30) days.
- 6.2 G.E.L. 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, obscured building defects, change of design and/or specifications, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to G.E.L. in the cost of labour or materials which are beyond G.E.L.' control.
- 6.3 At G.E.L.' sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by G.E.L., which may be:
  - (a) on completion of the Works; or

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- (b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by G.E.L.
- 6.5 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and G.E.L.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to G.E.L an amount equal to any GST G.E.L must pay for any supply by G.E.L under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.

### 7. Delivery of the Works

- 7.1 At G.E.L's sole discretion, any costs of delivery may be charged additionally to the Client.
- 7.2 The Client must take delivery of the Materials, either by receipt or collection, whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Materials as arranged then G.E.L shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.3 Subject to clause 7.4 it is G.E.L' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.4 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that G.E.L claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond G.E.L' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify G.E.L that the site is ready.
- 7.5 G.E.L may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time or date given by G.E.L to the Client is an estimate only. G.E.L shall not be liable for any loss or damage whatsoever due to failure by G.E.L to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of G.E.L.

### 8. Risk

- 8.1 If G.E.L retains ownership of the Materials under clause 13 then;
- (a) where G.E.L is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client 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 Client or the Client's nominated carrier takes possession of the Materials at G.E.L' address; or
    - (ii) the Materials are delivered by G.E.L or G.E.L' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests G.E.L to leave Materials outside G.E.L' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client'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 Client's expense.
- 8.3 Where G.E.L is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and G.E.L shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.4 Where the Client has supplied materials for G.E.L to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials.
- 8.5 The Client acknowledges that G.E.L is only responsible for parts that are replaced by G.E.L and that in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify G.E.L against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 8.6 In the event that the Client requests G.E.L to provide temporary repairs, any such repair and/or installation shall be done at the Client's risk. G.E.L shall accept no liability whatsoever for any resulting damage, indirect and/or consequential loss and/or expense incurred as a result of such action.
- 8.7 Any advice, recommendation, information, assistance or service provided by G.E.L in relation to Materials or Works supplied is given in good faith, is based on G.E.L' own knowledge and experience and shall be accepted without liability on the part of G.E.L and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
- 8.8 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify G.E.L immediately upon any proposed changes. The Client agrees to indemnify G.E.L against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 8.9 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to

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roofing) that G.E.L, its employees or contractors reasonably form the opinion that the Clients premises is not safe for the installation of Materials to proceed then G.E.L shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.4 above) until G.E.L is satisfied that it is safe for the installation to proceed. G.E.L may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.

### 9. Accuracy of Client's Plans and Measurements

- 1.1 G.E.L shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, G.E.L accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 1.2 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or G.E.L places an order based on these measurements and quantities. G.E.L accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

### 2. Access

- 2.1 The Client shall ensure that G.E.L has clear and free access to the work site at all times to enable them to undertake the Works. G.E.L 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 G.E.L.

### 3. Hidden Works

- 3.1 Prior to G.E.L commencing any work the Client must advise G.E.L of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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.
- 3.2 Whilst G.E.L will take all care to avoid damage to any underground services the Client agrees to indemnify G.E.L 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.

### 4. Compliance with Laws

- 4.1 The Client and G.E.L 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.
- 4.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 4.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- 4.4 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by G.E.L, then G.E.L shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.
- 4.5 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". G.E.L's live Works procedures are designed to eliminate risk of injury to G.E.L's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

### 5. Title

- 5.1 G.E.L and the Client agree that ownership of the Materials shall not pass until:
  - (a) the Client has paid G.E.L all amounts owing to G.E.L; and
  - (b) the Client has met all of its other obligations to G.E.L.
- 5.2 Receipt by G.E.L 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.
- 5.3 It is further agreed that:
  - (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to G.E.L on request.
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for G.E.L and must pay to G.E.L 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 G.E.L shall be sufficient evidence of G.E.L's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with G.E.L to make further enquiries.

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- (d) the Client 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 Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for G.E.L and must pay or deliver the proceeds to G.E.L on demand.
- (e) the Client should not convert or process the Materials or intermix them with other Materials but if the Client does so then the Client holds the resulting product on trust for the benefit of G.E.L and must sell, dispose of or return the resulting product to G.E.L as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises G.E.L to enter any premises where G.E.L believes the Materials are kept and recover possession of the Materials.
- (g) G.E.L may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client 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 G.E.L.
- (i) G.E.L may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

### 6. Personal Property Securities Act 1999 (“PPSA”)

- 6.1 Upon assenting to these terms and conditions in writing the Client 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 Client to G.E.L for Works – that have previously been supplied and that will be supplied in the future by G.E.L to the Client.
- 6.2 The Client 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 G.E.L may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, G.E.L 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 G.E.L; and
  - (d) immediately advise G.E.L 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.
- 6.3 G.E.L and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 6.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 6.5 Unless otherwise agreed to in writing by G.E.L, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 6.6 The Client shall unconditionally ratify any actions taken by G.E.L under clauses 14.1 to 14.5.

### 7. Security and Charge

- 7.1 In consideration of G.E.L agreeing to supply the Materials, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 7.2 The Client indemnifies G.E.L from and against all G.E.L’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising G.E.L’ rights under this clause.
- 7.3 The Client irrevocably appoints G.E.L and each director of G.E.L as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15.1 including, but not limited to, signing any document on the Client’s behalf.

### 8. Client’s Disclaimer

- 8.1 The Client hereby disclaims any right to rescind, or cancel any contract with G.E.L or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by G.E.L and the Client acknowledges that the Works are bought relying solely upon the Client’s skill and judgment.

### 9. Defects

- 9.1 The Client shall inspect the Materials/Works on delivery and shall immediately upon discovery and in any case within thirty (30) days of delivery (time being of the essence) notify G.E.L of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford G.E.L an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials/Works are defective in any way. If the Client shall fail to comply with these provisions the Materials/Works shall be presumed to be free from any defect or damage. For defective Materials, which G.E.L has agreed in writing that the Client is entitled to reject, G.E.L’ liability is limited to either (at G.E.L’ discretion) replacing the Materials or repairing the Materials.
- 9.2 G.E.L shall not be liable for any consequential loss or damage which may be attributed to the Client’s failure to notify G.E.L of any alleged defect immediately upon discovery of such defect.

### 10. Returns

- 10.1 Returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 17.1; and

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- (b) G.E.L has agreed in writing to accept the return of the Materials; and
  - (c) the Materials are returned at the Client's cost within thirty (30) days of the delivery date; and
  - (d) G.E.L will not be liable for Materials which have not been stored or used in a proper manner, and/or where any attempt has been made to modify the Materials, and/or rectify or repair any defect without G.E.L' express approval; 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.
- 10.2 Returned Materials may (at G.E.L' sole discretion), incur restocking and handling fees.
- 10.3 Non-stocklist items or Materials made or modified to the Client's specifications are under no circumstances acceptable for credit or return.

### 11. Warranties

- 11.1 For Materials not manufactured by G.E.L, the warranty shall be the current warranty provided by the manufacturer of the Materials. G.E.L 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.
- 11.2 To the extent permitted by statute, no warranty is given by G.E.L as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. G.E.L shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

### 12. Consumer Guarantees Act 1993

- 12.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by G.E.L to the Client.

### 13. Default and Consequences of Default

- 13.1 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 G.E.L' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes G.E.L any money the Client shall indemnify G.E.L from and against all costs and disbursements incurred by G.E.L in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, G.E.L' collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies G.E.L may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions G.E.L may suspend or terminate the supply of Works to the Client. G.E.L will not be liable to the Client for any loss or damage the Client suffers because G.E.L has exercised its rights under this clause.
- 13.4 Without prejudice to G.E.L' other remedies at law G.E.L shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to G.E.L shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to G.E.L becomes overdue, or in G.E.L' opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client 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 Client or any asset of the Client.

### 14. Cancellation

- 14.1 G.E.L 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 Client. On giving such notice G.E.L shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to G.E.L for Works already performed. G.E.L shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by G.E.L as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for products made and/or modified to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 15. Dispute Resolution

- 15.1 All disputes and differences between the Client and G.E.L 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.

### 16. Privacy Act 1993

- 16.1 The Client authorises G.E.L or G.E.L' agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.

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- (b) disclose information about the Client, whether collected by G.E.L from the Client directly or obtained by G.E.L 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 Client.
- 16.2 Where the Client is an individual the authorities under clause 24.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Client shall have the right to request G.E.L for a copy of the information about the Client retained by G.E.L and the right to request G.E.L to correct any incorrect information about the Client held by G.E.L.

### 17. Construction Contracts Act 2002

- 17.1 The Client hereby expressly acknowledges that:
  - (a) G.E.L 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 Client, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to G.E.L by a particular date; and
    - (iv) G.E.L has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if G.E.L 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 Client or by any person claiming through the Client; 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 G.E.L exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to G.E.L under the Contractual Remedies Act 1979; or
    - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of G.E.L suspending work under this provision.

### 18. General

- 18.1 The failure by G.E.L to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect G.E.L' 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.
- 18.2 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.
- 18.3 G.E.L shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by G.E.L of these terms and conditions (alternatively G.E.L' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by G.E.L nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 G.E.L may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.6 The Client agrees that G.E.L may amend these terms and conditions at any time. If G.E.L makes a change to these terms and conditions, then that change will take effect from the date on which G.E.L notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for G.E.L to provide any Works to the Client.
- 18.7 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.
- 18.8 The Client 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.