

1. Definitions

- 1.1 “Ultra Fire” means Ultra Fire Protection Limited, its successors and assigns or any person acting on behalf of and with the authority of Ultra Fire Protection Limited.
- 1.2 “Client” means the person/s buying the Goods 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 “Goods” means all Goods or Services supplied by Ultra Fire to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between Ultra Fire and the Client in accordance with clause 5 below.

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 the Goods.
- 2.2 These terms and conditions may only be amended with Ultra Fire’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Ultra Fire.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Ultra Fire as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services 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 Ultra Fire in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise Ultra Fire in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Ultra Fire for all additional costs incurred by Ultra Fire (including Ultra Fire’s profit margin) in providing any works, Goods, Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give Ultra Fire 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 Ultra Fire as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Ultra Fire’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Ultra Fire to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to Ultra Fire’s current price list; or
 - (c) Ultra Fire’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Ultra Fire reserves the right to change the Price if a variation to Ultra Fire’s quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as limitations to accessing the site, availability of machinery, prerequisite work by any third party not being completed, hidden pipes and wiring in walls or as a result of any increase to Ultra Fire’s in the cost of materials and labour) will be charged for on the basis of Ultra Fire’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At Ultra Fire’s sole discretion a non-refundable deposit may be required upon request.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Ultra Fire, which may be:
 - (a) on completion of the Services;
 - (b) by way of instalments/progress payments in accordance with Ultra Fire’s payment schedule;
 - (c) for certain approved Clients, 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;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Ultra Fire.
- 5.5 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 Ultra Fire.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Ultra Fire an amount equal to any GST Ultra Fire must pay for any supply by Ultra Fire under this or any other agreement for the sale of the Goods. 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.

6. Delivery

- 6.1 Subject to clause 6.2 it is Ultra Fire's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Ultra Fire claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Ultra Fire's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Ultra Fire that the site is ready.
- 6.3 At Ultra Fire's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.4 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Ultra Fire shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.5 Any time or date given by Ultra Fire to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Ultra Fire will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Risk

- 7.1 If Ultra Fire retains ownership of the Goods under clause 11 then:
- (a) where Ultra Fire is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods 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 Goods at Ultra Fire's address; or
 - (ii) the Materials are delivered by Ultra Fire or Ultra Fire's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Ultra Fire is to both supply and install Goods then Ultra Fire shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 7.2 If the Client requests Ultra Fire to leave Goods outside Ultra Fire's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.3 Where the Client has supplied materials for Ultra Fire to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Ultra Fire shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.4 Where Ultra Fire is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Ultra Fire 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.
- 7.5 The Client acknowledges that Ultra Fire is only responsible for parts that are replaced by Ultra Fire and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify Ultra Fire against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7.6 In the event that Ultra Fire discovers asbestos/hazardous materials whilst undertaking any Services Ultra Fire shall immediately advise the Client of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by Ultra Fire as a result of the discovery of asbestos/hazardous materials and/or any suspension of Services in relation thereto.
- 7.7 The Client accepts that electronic security systems, smoke, heat and like detectors installed to / at their premises:
- (a) are for monitoring and detection purposes and should not be seen as a life saving device; and
 - (b) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.
- 7.8 It shall be the Client's responsibility:
- (a) to ensure the security system equipment is tested and maintained to full operational condition; and
 - (b) for all phone calls emanating from the security system panel; and
 - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.

8. Accuracy of Client's Plans and Measurements

- 8.1 Ultra Fire 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, Ultra Fire accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

9. Access

- 9.1 The Client shall ensure that Ultra Fire has clear and free access to the work site at all times to enable them to undertake the works. Ultra Fire shall not be liable for any loss or damage to the site (including, without limitation,

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damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Ultra Fire.

10. Underground Locations

- 10.1 Prior to Ultra Fire commencing any work the Client must advise Ultra Fire 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.
- 10.2 Whilst Ultra Fire will take all care to avoid damage to any underground services the Client agrees to indemnify Ultra Fire 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 10.1.

11. Title

- 11.1 Ultra Fire and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Ultra Fire all amounts owing to Ultra Fire; and
 - (b) the Client has met all of its other obligations to Ultra Fire.
- 11.2 Receipt by Ultra Fire 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to Ultra Fire on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Ultra Fire and must pay to Ultra Fire the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Ultra Fire and must pay or deliver the proceeds to Ultra Fire on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Ultra Fire and must sell, dispose of or return the resulting product to Ultra Fire as it so directs.
 - (e) the Client irrevocably authorises Ultra Fire to enter any premises where Ultra Fire believes the Goods are kept and recover possession of the Goods.
 - (f) Ultra Fire may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Ultra Fire.
 - (h) Ultra Fire may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 12.1 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 Goods previously supplied by Ultra Fire to the Client (if any) and all Goods that will be supplied in the future by Ultra Fire to the Client.
- 12.2 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 Ultra Fire may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Ultra Fire for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of Ultra Fire; and
 - (d) immediately advise Ultra Fire of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 Ultra Fire and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Ultra Fire, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by Ultra Fire under clauses 12.1 to 12.5.

13. Security and Charge

- 13.1 In consideration of Ultra Fire agreeing to supply the Goods, 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

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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).

- 13.2 The Client indemnifies Ultra Fire from and against all Ultra Fire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Ultra Fire's rights under this clause.
- 13.3 The Client irrevocably appoints Ultra Fire and each director of Ultra Fire as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Client's Disclaimer

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

15. Defects

- 15.1 The Client shall inspect the Goods on delivery and shall within twenty (20) days of delivery (time being of the essence) notify Ultra Fire of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Ultra Fire an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Ultra Fire has agreed in writing that the Client is entitled to reject, Ultra Fire's liability is limited to either (at Ultra Fire's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above.

16. Warranty

- 16.1 For Goods not manufactured by Ultra Fire, the warranty shall be the current warranty provided by the manufacturer of the Goods. Ultra Fire 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 Goods.

17. Consumer Guarantees Act 1993

- 17.1 If the Client is acquiring Goods 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 Goods by Ultra Fire to the Client.

18. Intellectual Property

- 18.1 Where Ultra Fire has designed, drawn or developed Goods or plans for the Client, then the copyright in any designs and drawings and documents shall remain the property of Ultra Fire.
- 18.2 The Client warrants that all designs, specifications or instructions given to Ultra Fire will not cause Ultra Fire to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Ultra Fire against any action taken by a third party against Ultra Fire in respect of any such infringement.
- 18.3 The Client agrees that Ultra Fire may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Ultra Fire has created for the Client.

19. Default and Consequences of Default

- 19.1 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 Ultra Fire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Ultra Fire any money the Client shall indemnify Ultra Fire from and against all costs and disbursements incurred by Ultra Fire in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Ultra Fire's collection agency costs, and bank dishonour fees).
- 19.3 Without prejudice to any other remedies Ultra Fire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Ultra Fire may suspend or terminate the supply of Goods to the Client. Ultra Fire will not be liable to the Client for any loss or damage the Client suffers because Ultra Fire has exercised its rights under this clause.
- 19.4 Without prejudice to Ultra Fire's other remedies at law Ultra Fire shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Ultra Fire shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Ultra Fire becomes overdue, or in Ultra Fire's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Ultra Fire may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Ultra Fire shall

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repay to the Client any money paid by the Client for the Goods. Ultra Fire shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 20.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Ultra Fire as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods made 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.

21. Privacy Act 1993

- 21.1 The Client authorises Ultra Fire or Ultra Fire's 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.
 - (b) disclose information about the Client, whether collected by Ultra Fire from the Client directly or obtained by Ultra Fire 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.
- 21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Client shall have the right to request Ultra Fire for a copy of the information about the Client retained by Ultra Fire and the right to request Ultra Fire to correct any incorrect information about the Client held by Ultra Fire.

22. Unpaid Seller's Rights

- 22.1 Where the Client has left any item with Ultra Fire for repair, modification, exchange or for Ultra Fire to perform any other service in relation to the item and Ultra Fire has not received or been tendered the whole of any moneys owing to it by the Client, Ultra Fire shall have, until all moneys owing to Ultra Fire are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of Ultra Fire shall continue despite the commencement of proceedings, or judgment for any moneys owing to Ultra Fire having been obtained against the Client.

23. Compliance with Laws

- 23.1 The Client and Ultra Fire shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services (including, but not limited to any applicable Safety Standards).
- 23.2 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.

24. Construction Contracts Act 2002

- 24.1 The Client hereby expressly acknowledges that:
- (a) Ultra Fire 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 Ultra Fire by a particular date; and
 - (iv) Ultra Fire has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if Ultra Fire 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 Ultra Fire exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Ultra Fire 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 Ultra Fire suspending work under this provision.

25. General

- 25.1 The failure by Ultra Fire to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Ultra Fire'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.
- 25.2 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 Tauranga in New Zealand.
- 25.3 Ultra Fire 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 Ultra Fire of these terms and conditions (alternatively Ultra Fire's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 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 Ultra Fire nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 Ultra Fire may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.6 The Client agrees that Ultra Fire may amend these terms and conditions at any time. If Ultra Fire makes a change to these terms and conditions, then that change will take effect from the date on which Ultra Fire notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Ultra Fire to provide Goods to the Client.
- 25.7 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.
- 25.8 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.