

TERMS OF TRADE

1. Definitions

1.1. Unless the context otherwise requires, capitalised terms have the meaning set out in the Contract Agreement for Services, or as set out below:

"**Goods**" means any goods to be provided by Vortex to the Client as set out in each Job Sheet, or where there is no Job Sheet, the goods that Vortex agrees to provide.

"**Job Sheet**" means a document materially in the form of Schedule 1 which sets out the Services to be provided by Vortex and other commercial details for a particular Works Contract.

"**Services**" means the services supplied by Vortex to the Client as set out in each Job Sheet, or where there is no Job Sheet, the services that Vortex agrees to provide.

"**Site**" means the location where the Works are to be provided.

"**Price**" means the Price payable for the Goods and/or Services as set out in the Job Sheet or where there is no Job Sheet or no Price is specified, as calculated in accordance with these terms and conditions, and as may be amended in accordance with these terms and conditions.

"**Working Day**" means any day which is not a Saturday, Sunday, statutory holiday in the region where the Site is located, or any day between 24 December to 5 January inclusive.

"**Works**" means any Goods or Services to be provided pursuant to the Contract Agreement for Services or any Job Sheet.

2. Works Contracts

2.1. The Client may request Works from Vortex. Vortex is not obliged to accept the request for Works, notwithstanding the Contract Agreement for Services. If Vortex intends to carry out the Works, Vortex will provide a completed Job Sheet substantially in the form of Schedule 1 which is capable of acceptance by the Client within 20 Working Days or such shorter period specified. On execution of the Job Sheet or confirmation of acceptance, a contract for the provision of the Works will form (**Works Contract**) and be governed by the Terms of Trade herein.

2.2. In some circumstances, a Job Sheet may not be issued, in which case a Works Contract will form on confirmation from both parties that the Works will be performed, and such Works Contract will be governed by the Terms of Trade herein.

2.3. A Works Contract may be terminated by Vortex if invoices have not been paid in full by the due date and are outstanding for more than five Working Days, the Works are suspended by the Client for more than one month, or by either party if the other party 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 if a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of either party.

2.4. In the event the Contract Agreement for Services is terminated, each Works Contract will continue in full force

and effect until completion of the Works, unless terminated in accordance with 2.3 or at law.

3. Vortex obligations

3.1. Vortex will provide the Works within a reasonable time and to the standard required of a competent and experienced provider of the Services.

3.2. Vortex may engage subcontractors and consultants to perform the Works, however, will remain responsible for the acts of subcontractors and consultants.

3.3. Where requested to work outside the hours of 6am to 6pm (**Regular Hours**), or where Vortex is prevented from carrying out the Works such that it must work outside of Regular Hours in order to meet quality standards, or for reasons of safety or avoiding damage to property, night shift rates will apply. Night shift rates will be 1.5 times the Regular Hours rates unless a different rate is specified in the Job Sheet.

4. Exclusions from scope and limitations

4.1. The presence of plant or tree root growth and/or other blockages may indicate damaged pipe work. Where the Services include clearing such blockages, the Client acknowledges and accepts that the Works may cause damage to the pipes. Vortex is not responsible for such damage.

4.2. Where the works involve relining, Vortex is not liable for any damage to the liner due to the unforeseen use of the host pipe during the relining process nor will the Vortex be liable in the event that the reline is not successful as a result of events beyond Vortex' control.

4.3. Vortex is not responsible for the re-instatement of the Site or any rectification or re-installation of any utilities. Vortex is not responsible for the removal of rubbish from or clean-up of the Site.

4.4. Vortex 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, and site equipment such as septic tanks), unless caused directly by Vortex' negligence.

4.5. While Vortex will take all reasonable care in providing the Works, Vortex is not liable for any damage caused to utilities, pipes, or any underground services as a result of the Works.

4.6. Vortex is not responsible for the pre-existing condition of the Site or any structures or utilities on Site and makes no warranty that the Site, structures or utilities are suitable for the Works.

4.7. Vortex will not be liable for any delays in the completion of the Works.

4.8. Vortex does not warrant or guarantee the accuracy or completeness of any information provided to the Client. Vortex is not responsible for any design, fitness for purpose, or suitability of the Works and the Client confirms that in procuring the Works it has relied on its own skill, inspection and judgement and has determined that the Works are appropriate for the Site and the Client's purposes.

4.9. The maximum aggregate liability of Vortex to the Client whether arising in contract, tort or otherwise, in connection with the Contract Agreement for Services or in relation to any

Works Contract is limited to fifty percent of the Price for the relevant Works Contract, and where there is no Works Contract, is limited to \$50,000.

- 4.10.** Where liability for any damage or loss is excluded, the Client will indemnify Vortex against any claims or loss incurred by Vortex in respect of such damage.

5. Client Obligations

- 5.1.** The Client will provide unrestricted access to the Site to enable Vortex to provide the Works, will not hinder, and will ensure that other contractors on the Site do not hinder, the progress of Vortex' works.
- 5.2.** The Client will procure all licenses, consents, and approvals necessary for the carrying out of the Works and all incidental impacts of the Works, unless specified otherwise in the Job Sheet. This includes permission to access property (including the Site), and permission to carry out the Works.
- 5.3.** The Client is responsible for, and shall ensure no damage occurs to, any property (including equipment, vehicles or machinery) provided by Vortex, while the property is on the Site. The Client will return, or make available for collection, all property in the same condition it received the property on Site, and shall be liable for the full replacement cost (as advised by Vortex) of any property which is damaged or lost.
- 5.4.** The Client will ensure that Vortex is noted on any insurance policy that the Client holds in relation to situations where Vortex is carrying out Works in relation to a structure under construction for which the Client has any insurance cover.
- 5.5.** The Client will pay the Price for the Works.
- 5.6.** It is the Client's responsibility to:
- (a) arrange:
 - (i) diversion of any storm water, sewer or water supply pipe, electricity cable, telephone cable or gas pipes;
 - (ii) the removal of any trees or stumps; and
 - (iii) the excavation of any rock, requiring the use of pneumatic or hydraulic equipment for extraction, planking, strutting, shoring or underpinning;
 - (b) ensure that prior to commencement of the Services Vortex is advised of the precise location of all known underground services, and asbestos and/or hazardous materials (and that these are clearly marked) on site, including but 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.
- 5.7.** Vortex will take all care to avoid damage to any notified underground services. The Client agrees to indemnify Vortex 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 by the Client.
- 5.8.** In the event asbestos or any other toxic substances are discovered at the Site it is the Client must ensure the safe removal of the same in order for the Works to proceed. The Client agrees to indemnify Vortex for and against any costs incurred by Vortex as a consequence of such discovery.

Under no circumstances will Vortex handle removal of asbestos product. Vortex may refuse to enter the Site in the event Vortex believes it to be unsafe.

6. Health and Safety

- 6.1.** The Client will be responsible for health and safety management and induction. The parties will meet as required to discharge their obligations as PCBUs under the Health and Safety at Work Act 2015.
- 6.2.** If at any time Vortex considers that the Works cannot proceed safely due to any act or omission of the Client or the Client's other contractors, Vortex may suspend the Works in its absolute discretion at the Client's cost.

7. Change in Control

- 7.1.** The Client may not assign or novate its interests under any Works Contract or the Contract Agreement for Services without Vortex' consent. Assignment includes any change of ownership of the Client.

8. Price and Payment

- 8.1.** The Price payable for each Works Contract will be as set out in the Job Sheet. Where no Job Sheet is provided, or the Job Sheet does not specify the Price, the Price will be determined as the actual cost of performing the Works, plus a 25% margin for overheads and profit.
- 8.2.** The Price recorded in the Job Sheet or otherwise payable in accordance with clause 8.1, will be determined with reference to the rates in Schedule 2, which may be updated no more frequently than twice per year by notice in writing to the Client. The updated rates will apply to any new Works Contract entered into after the change is notified. The Price may also include the notified cost of items and disbursements which are not included in any rates.
- 8.3.** Vortex may charge the rate for resources (whether machinery, vehicles, equipment or personnel) commencing on the resource leaving Vortex' premises until return to the Vortex premises, as specified in the Job Sheet. Where a daily rate is specified, the daily rate shall apply to part days.
- 8.4.** Notwithstanding that the Job Sheet records a fixed Price or rates, the Price may be increased for any Works Contract to reflect Vortex' additional costs plus a margin to cover overheads and profit as specified in the Job Sheet (or where no margin is specified in the Job Sheet, 25%) in the following situations:
- (a) if a variation to the Works is requested or becomes necessary; or
 - (b) where a change in the Works is required, or additional costs or delays are incurred as a result of hidden or unforeseen difficulties including, but not limited to: poor weather, ground condition such as sub-soil water conditions, limitations to accessing the Site, safety considerations, prerequisite work by any third party or the Client not being completed, inaccurate structural measurements or information provided by the Client, change of design, iron reinforcing rods in concrete, or hidden pipes and wiring/cabling, the rapid deterioration or collapse of the host pipe during the course of the Services, or where the state or condition of the host pipe is worse than originally anticipated, the excavation of rock or rock-like substances, interruption during the

relining process due to the unexpected use of the host pipe resulting in the need to abort the process, as a result of dewatering being required due to permanent groundwater or any interruption to the Services by the Client or any third party; or

(c) in the event of demonstrated cost increases to Vortex in providing the Works, due to circumstances beyond the reasonable control of Vortex.

- 8.5.** At Vortex' sole discretion, a deposit may be required prior to commencement of any Works Contract.
- 8.6.** Vortex will issue invoices at the times detailed in the Job Sheet, or where no timeframe is detailed, fortnightly. Payment in full of any invoice is due 10 Working Days following service of the invoice, or such earlier date specified on the invoice.
- 8.7.** In the event the invoice is a payment claim under the Construction Contracts Act 2002, the Client must issue a payment schedule within five Working Days after service of the payment claim if it intends to issue a payment schedule.
- 8.8.** Payment may be made by electronic/on-line banking, or by any other method as agreed with Vortex.
- 8.9.** Unless otherwise stated the Price does not include GST which is payable in addition to 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.
- 8.10.** Receipt by Vortex 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.
- 8.11.** In the event that payment of any invoice is outstanding, Vortex may suspend the Works at the Client's cost immediately on notice in writing. Vortex will resume the Works when all outstanding payments are received.
- 8.12.** Interest on unpaid amounts is payable at 2 x the SME overdraft rate as published by the Reserve Bank of New Zealand, compounding monthly.
- 8.13.** The Client shall indemnify Vortex for all costs and disbursements incurred by Vortex in recovering any outstanding amount payable (including but not limited to internal administration fees, legal costs on a solicitor-client basis, collection agency costs, and bank dishonour fees).

9. Delivery of Goods

- 9.1.** In the event the Works includes the provision of any Goods, such Goods will be treated as delivered and deemed acceptable once the Client or the Client's agent takes possession of the Goods. Risk in the Goods passes on delivery.
- 9.2.** Where Vortex is responsible for delivering the Goods to the Client's site, the Client must accept delivery provided at least five Working Days' notice has been provided. The Client must ensure a representative is present to accept the Goods. Where a representative is not present, permission to leave the Goods at the Client's site will be deemed.
- 9.3.** Vortex will endeavour to provide the Goods on or before the date requested, however will not be liable for delays beyond its control.

- 9.4.** Ownership of the Goods passes on full payment for the Goods.

10. Defects

- 10.1.** The Client shall inspect the Works on completion as notified by Vortex and shall within five Working Days notify Vortex of any alleged defect or default. Failure to notify of a defect or default within this time will be confirmation that there are no defects or defaults.
- 10.2.** If any latent defect in any workmanship becomes apparent after the period in 10.1 and is reported to Vortex within three months of completion of the Works then Vortex will remedy the defect within a reasonable time. Vortex' liability will be limited to the remediation of its own Works and will not extend to liability for incidental or resulting re-work or remediation of any third party or Client works.
- 10.3.** Any defect in the Works arising after the period in 10.2 must be notified to Vortex who may remedy the defect at its discretion.
- 10.4.** All defects must be notified to Vortex and the Client shall afford Vortex an opportunity to inspect and remedy the Works within a reasonable time. Failure by the Client to comply with this clause shall absolve Vortex of liability for the defect, regardless of when the defect arose.

11. Insurances

- 11.1.** Vortex will hold and maintain public liability insurance for an amount not less than \$10,000,000. Certificates confirming the insurance policy is in place will be provided on request.
- 11.2.** In the event the Works consist of alterations or works in relation to existing structures, the Client must ensure that such structures are insured and that the Works are permitted in accordance with the insurance policies. The Client must ensure that Vortex is noted as an interested party and receives a waiver of subrogation in respect of any liability for damage to the structures.

12. Disputes

- 12.1.** In the event of any dispute or difference, the parties must endeavour to negotiate in good faith to resolve the dispute or difference.

13. General

- 13.1.** Vortex' failure to enforce any provision of these Terms of Trade shall not be treated as a waiver of that provision, nor shall it affect the Vortex' right to subsequently enforce that provision. If any provision of these Terms of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2.** The Contract Agreement for Services and any Works Contract shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of New Zealand.
- 13.3.** Vortex shall be under no liability whatsoever to the Client for any incidental, indirect, special and/or consequential loss, damage and/or expense (including loss of profit and any claims, demands or actions against the Client by any third party) suffered by the Client arising out of or in connection with the Works Contract or the Contract Agreement for Services.