

1. **SCOPE**
- 1.1 In consideration for payment of Arbotree Ltd (AL)'s fees (**Fees**), AL agrees to provide services (**Services**) to the Customer (**Customer**) on the terms of any quote provided (**Quote**) and on the terms of these terms of trade (**Terms**).
2. **CUSTOMER'S OBLIGATIONS**
- 2.1 The Customer shall ensure AL is provided reasonable instructions, directions and access to allow AL to provide the Services, including any specific instructions that the Customer may have in relation to access to the site. AL may be required to spend more time, and the Fees payable by the Customer may increase if the Customer does not comply with this obligation.
- 2.2 The Customer shall ensure that they point out to AL the accurate location of all underground services. Failure to do so may cause AL to spend additional time, which may result in additional Fees. If underground services are damaged due to a Customer's breach of this clause, the Customer will be responsible for the cost of remedying that damage.
- 2.3 The Customer acknowledges that AL uses heavy machinery and equipment, and that while AL takes all due care with that machinery and equipment, from time to time lawn will be marked or damaged. AL shall not be required to reinstate minor marks or damage to the lawn.
3. **TIMING AND TITLE**
- 3.1 Property and ownership in all products supplied and/or installed by AL (**Product**), whether in their original form or incorporated in, co-mingled with or attached to another product, will not pass to the Customer but will remain with AL until AL receives payment in full of all Fees associated with the Products and all other amounts that may be owed to AL for any reason.
- 3.2 AL will endeavour to complete their Services in a timely manner, but will not be liable to the Customer for any loss or damage arising in any way from any delay in performance.
- 3.3 The Customer agrees to grant AL a security interest in the Product until it has been paid for in full (**Security Interest**).
- 3.4 The Customer agrees to do all acts necessary and provide AL on request all information required to register a financing statement over the Products. The Customer waives the right to receive a verification statement.
4. **LIABILITY**
- 4.1 AL is not liable at any time under or in relation to this Agreement for any defect in the Product resulting from any action or omission by the Customer or any third person, including any failure to take all due and reasonable care of the Product.
- 4.2 The Customer expressly agrees with AL that for the purposes of the creation of this Agreement:
  - (a) the Customer has not relied upon any representation or warranty by AL that is not contained in the Quote or these Terms; and
  - (b) the Customer has made its own independent assessment of any information connected with or relevant to this Agreement or the Product and relied exclusively upon that assessment.
5. **WARRANTY & DEFECTS**
- 5.1 For all Products, AL provides a warranty against manufacturing defects (**Warranty**) for a period of 12-months following delivery of the Product (**Warranty Period**).
- 5.2 For any defects that arise during the Warranty Period, AL will take reasonable steps to remedy the defective Product. Under no circumstance will AL be liable for a sum worth more than the value of the Product.
- 5.3 The Customer is responsible to ensure that the Product is used and maintained in accordance with good practice and with AL specifications and guidelines (if any). AL will not be liable for any damage that arose, or was made worse, by the Customer's failure to comply with this clause 5.3.
- 5.4 The Customer must notify AL of any manufacturing defects that become apparent during the Warranty Period, as soon as they are discovered, or as soon as they are reasonably capable of being discovered. The Customer acknowledges that failure to notify AL of any such defect in a timely manner, or failure to discover a defect that would be reasonably apparent upon inspection, may cause the defect to cause unnecessary damage to the Product. AL will not be liable for any such unnecessary damage.
- 5.5 Any warranty may be voided by unreasonable use, damage or misuse of equipment, damage after the Products have left AL possession, negligent installation or operation, inadequate cleaning or maintenance, unauthorised repairs, modifications or the use of parts, hardware, software or consumables not supplied by AL.
- 5.6 The Customers rights under this clause 5 are in addition to, and not a substitute for any rights the Customer may have under the Consumer Guarantees Act 1993.
6. **PROTECTION OF INTELLECTUAL PROPERTY**
- 6.1 AL may create electrical designs (**Designs**) on behalf of its customers.
- 6.2 For the purposes of this Agreement, **Intellectual Property** means the Designs, all rights, including copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual property or proprietary right in or relating to the Product.
- 6.3 Unless otherwise agreed in writing, the Designs and all Intellectual Property supplied or created under this Agreement will be owned by AL, and AL grants to the Customer a perpetual, transferable and non-exclusive licence to use the Designs (**Licence**). The Licence does not allow the Customer to cause any other person or entity to reproduce or create a new product based on the Designs.
- 6.4 The Customer must not, nor may it permit any other person to do any act that would or might invalidate or be inconsistent with AL's rights in the Intellectual Property.
- 6.5 The Customer must, at AL's expense, take all such steps as AL may reasonably require to assist AL to maintain the validity and enforceability of AL's rights in the Intellectual Property.
7. **FEES AND PAYMENT**
- 7.1 The Customer must pay the Fees.
- 7.2 Due to the nature of the work undertaken by AL, all Quotes are subject to change, unless AL expressly agrees in writing that a Quote will not change.
- 7.3 Any Quotes provided by AL are based on the information provided by the Customer. Where any circumstances change, AL will be entitled to revise the terms of any Quote, including any Fees payable within any Quote. Where AL anticipates that a Quote will need to be revised, it will use reasonable endeavours to advise the Customer within a reasonable timeframe.
- 7.4 The Fees for the supply of any Product are exclusive of delivery costs incurred by AL, which will be charged to the Customer in addition to the Fees.
- 7.5 All sums payable by the Customer under this Agreement shall be made in full without set-off or counterclaim and, except to the extent required by law, free and clear of any deduction on account of tax or otherwise.
- 7.6 If the Customer fails to pay any amount due under this Agreement on the due date, AL may without prejudice to its other rights, require the Customer to pay interest on the amount due from the due date until the date of payment, at a rate equal to 2% per month (in addition to the Customer remaining liable for the full amount outstanding).
- 7.7 Unless otherwise agreed in writing with AL, all Fees will be payable within seven (7) days of issue on an invoice by AL. If a deposit is requested by AL as part of the Quote, the deposit must be paid prior to commencement of the Services.
- 7.8 All Fees noted in this Agreement are in New Zealand dollars and are GST exclusive unless stated otherwise.
8. **CONFIDENTIALITY, SECURITY AND PUBLICITY**
- 8.1 The parties recognise and acknowledge the confidential nature of any information which is or has been disclosed by one party to the other, but does not include any information that is (such information to be **Confidential Information**):
  - (a) on receipt, in the public domain or that subsequently enters the public domain without any breach of this Agreement;
  - (b) on receipt, already known by the party receiving it;
  - (c) at any time after the date of receipt, received in good faith from a third party; and
  - (d) required by law to be disclosed.
- 8.2 Neither party may use or disclose any Confidential Information other than:
  - (a) to its employees to the extent necessary;
  - (b) with the express prior written consent of the other party; and
  - (c) to its professional advisers.
- 8.3 Neither party may advertise or publicly announce any matter relating to the existence or the contents of this Agreement without the other party's prior written consent.
- 8.4 The Customer shall indemnify AL against any losses, costs (including solicitor and client costs), expenses, demands or liability whether direct, indirect, consequential, or otherwise and whether arising in contract, tort (including in each case negligence), or equity or otherwise incurred because of any unauthorised disclosure or use of the Confidential Information by the Customer or any of its employees.
9. **LIMITATION OF LIABILITY**
- 9.1 AL shall not have any liability or responsibility to the Customer for any loss which does not flow directly or naturally (i.e. in the ordinary course of things) from a breach of this Agreement including, in each case consequential loss of business or profits or other loss. AL shall only be liable for losses (excluding loss of business or profits) which flow directly or naturally from a breach of this Agreement up to a maximum of the amount paid by the Customer to AL for the amount paid for the Products or Services.
10. **SUSPENSION AND TERMINATION**
- 10.1 AL may suspend their obligation to supply the Product if a dispute is raised in accordance with clause 13.3, until that dispute has been resolved.
- 10.2 AL may terminate this Agreement by providing written notice of not less than two weeks to the Customer.
- 10.3 Either party may terminate this Agreement immediately by notice in writing, upon:
  - (a) the other party committing any breach of this Agreement that is incapable of remedy;
  - (b) the other party failing to remedy any breach of this Agreement that is capable of remedy within 30 days of notice of that breach having been given by the non-defaulting party to the other party; and
  - (c) the commencement of liquidation or the insolvency of the other party (except for the purposes of solvent amalgamation or reconstruction) or upon the appointment of a receiver, statutory manager or trustee of the other party's property.
11. **FORCE MAJEURE**
- 11.1 Either party may suspend its obligations to perform this Agreement if it is unable to perform as a direct result of a war, riot, strike, natural or man-made disaster or other circumstance of a similar nature (**Force Majeure Event**). Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.
- 11.2 Where a party's obligations have been suspended pursuant to clause 11.1 for a period of 30 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other party.
12. **GENERAL**
- 12.1 The Customer shall not assign its rights under this Agreement without AL's consent, which shall not be unreasonably withheld.
- 12.2 This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
- 12.3 No amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 12.4 No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.
- 12.5 The agreements, obligations and warranties contained in this Agreement shall not merge on completion of the transactions contemplated by it but shall remain in full force until satisfied.
- 12.6 This agreement may be executed in two or more counterparts, all of which together will be deemed to constitute one and the same agreement.
- 12.7 This Agreement shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
13. **DISPUTE RESOLUTION**
- 13.1 Where any dispute arises between the parties concerning this Agreement or the circumstances, representations, or conduct giving rise to the Agreement, no party may commence any court or arbitration proceedings relating to the dispute unless that party has complied with the procedures set out in this clause 13.
- 13.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within seven (7) days of receipt of the notice give written notice to the first party, naming its representative for the negotiations. Each representative nominated shall have authority to settle or resolve the dispute.
- 13.3 If the parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the first party, then the parties must immediately refer the dispute to mediation.
- 13.4 The mediation must be conducted in terms of the LEADR New Zealand Inc Standard Mediation Agreement. The mediation must be conducted by a mediator at a fee agreed by the parties. Failing agreement between the parties, the mediator shall be selected and his or her fee determined by the Chair for the time being of LEADR New Zealand Inc.
14. **WARRANTY:**
- 14.1 Where the Customer is a company, trust or other entity, the person(s) signing this agreement on behalf of the Customer personally warrant(s) that that person or those persons have the power to enter into, and have properly signed this Agreement in accordance with the terms of the Companies Act 1993 and/or the Customer's constitution, trust deed or other founding document (as the case may be); and the Customer will perform its obligations under this Agreement.