

Waterite Pumps & Electrical Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Waterite" means Waterite Pumps & Electrical Limited, its successors and assigns or any person acting in behalf of or through the authority of Waterite Pumps & Electrical Limited.
 - 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting Waterite to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and
 - 1.3 "Where there is more than one Client, reference to each Client jointly and severally; and
 - 1.4 (a) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - 1.5 (b) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "We" means Waterite and "Waterite" shall refer 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 (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between Waterite and the Client in accordance with clause 6 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 any Works.
 - 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and Waterite.
 - 2.3 Any advice, recommendation, information, assistance or service provided by Waterite in relation to Materials or Works supplied is given in good faith, is based on Waterite's own knowledge and experience and shall be accepted without liability on the part of Waterite and it shall be the responsibility of the Client to confirm the accuracy of the reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
 - 2.4 The Client acknowledges and agrees that:
 - (a) in the event that Waterite is required to provide the Works urgently, that may require Waterite staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Waterite reserves the right to charge the Client additional labour costs; and
 - (b) the Client requests Waterite to make an emergency Call-Out for critical equipment undertaken during normal work hours between (8am-5pm Monday to Friday) then Waterite reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between Waterite and the Client; and
 - (c) the Client requests Waterite to make an emergency after hours Call-Out to carry out Works for critical equipment then Waterite reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works, unless otherwise agreed between Waterite and the Client.
 - 2.5 If Waterite has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, the Client will be charged to the Client irrespective of whether or not the repair goes ahead.
 - 2.6 The Client acknowledges and accepts that the supply of Materials for accepted orders will be subject to availability and if, for any reason, Materials are not or cease to be available, Waterite reserves the right to substitute Materials for the Materials for components of the Materials) and vary the Price as per clause 6.2. In all such cases Waterite will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as the Client agrees to such changes.
 - 2.7 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.
3. **Representative**
 - 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Waterite as the Client's duly authorised representative, that once introduced that person is the Client's representative for all purposes of the contract, in the Client's behalf and/or to request any variation thereto (such authority to continue until all requested Materials have been delivered or the Client otherwise notifies Waterite 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 Waterite 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 Waterite for all additional costs incurred by Waterite (including Waterite's profit margin) in providing any Materials, Works or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
4. **Errors and Omissions**
 - 4.1 The Client acknowledges and accepts that Waterite shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) in respect of any inadvertent mistake made by Waterite in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Waterite in respect of the Works, or
 - (c) in respect of any error or omission caused by the Client.
 - 4.2 In the event of such an error or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of Waterite; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
5. **Change of Ownership**
 - 5.1 The Client shall give Waterite 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), change of the business structure or any other details that shall be liable for any loss incurred by Waterite as a result of the Client's failure to comply with this clause.
6. **Price and Payment**
 - 6.1 At Waterite's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Waterite to the Client in respect of Works performed or Materials supplied; or
 - (b) Waterite's Price to the date of delivery of the Works according to Waterite's current schedule; or
 - (c) Waterite's quoted Price (subject to clause 6.2) which shall be binding upon Waterite provided that the Client shall accept Waterite's quotation in writing within thirty (30) days.
 - 6.2 Waterite 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 (including, but not limited to, poor weather conditions, prerequisite work by any third party not being completed, limitations in accessing the site, hard rock barriers below the surface, iron or steel reinforcement, 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 Waterite in the cost of labour or materials which are beyond Waterite's control.
 - 6.3 Variations will be charged for on the basis of Waterite's quotation, and will be detailed in writing, and shown as variations on Waterite's invoice. The Client shall be required to respond to any variation submitted by Waterite within ten (10) working days. Failure to do so will entitle Waterite to proceed with the Works at the Price. Payment for all variations must be made in full at the time of their completion.
 - 6.4 At Waterite's sole discretion a deposit may be required.
 - 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date determined by the Client, which may be:
 - (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Waterite's specified progress payment schedule. Such a payment claim may include the reasonable value of the Materials, Works or variations and the value of any Materials delivered to the worksite but not yet installed;
 - (c) for certain approved Client's due twenty (20) days following the end of the month in which a statement is posted to the Client or to the Client's nominated 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 Waterite.
 - 6.6 Payment may be made by cash, cheque, electronic/line banking, or by any other method as agreed to between the Client and Waterite.
 - 6.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to or by the Client, or to withhold payment of any invoice because part of that invoice is in dispute.
 - 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Waterite an amount equal to any GST Waterite must pay for any supply by Waterite under this contract or in connection with the Works. Waterite will not charge 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 Subject to clause 7.2 it is Waterite's responsibility to ensure that the Works start as soon as it is reasonably possible.
 - 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Waterite claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Waterite'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 Works; or
 - (c) notify Waterite of the site and/or any other relevant information.
 - 7.3 Waterite 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.
 - 7.4 Any time specified by Waterite for delivery of the Works is an estimate only and Waterite will not be liable for any delay or damage incurred by the Client if delivery is being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Waterite is unable to complete the Works by the time specified, Waterite shall, at the Client's request, then Waterite shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
8. **Risk**
 - 8.1 Risk of damage to or loss of the Materials passes to the Client on Delivery and the Client must insure the Materials on or before Delivery.
 - 8.2 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Client, Waterite is entitled to receive all insurance proceeds payable for the Materials in the event of such damage, provided that Waterite is satisfied with evidence of Waterite's rights to receive the insurance proceeds without the need for any person dealing with Waterite to make further enquiries.
 - 8.3 At Waterite's sole discretion the cost of delivery is in addition to the Price.
 - 8.4 If the Client requests Waterite to leave Materials outside Waterite's premises for collection or to deliver the Materials to an unattended location, then such Materials shall be left at the Client's sole risk.
 - 8.5 Waterite accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with Waterite's and/or the manufacturers' recommendations.
 - 8.6 Waterite shall be liable for 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, Waterite accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
 - 8.7 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 Waterite immediately upon any proposed changes. The Client agrees to indemnify Waterite against any additional costs incurred with such a re-positioning of electrical wiring. All such variations shall be invoiced in accordance with clause 6.2.
- 8.8 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, the installation of the Materials, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc) Waterite reasonably forms the opinion that the Client's proposed site is not safe for the installation of the Materials, then Waterite reserves the right to delay installation of the Materials (in accordance with clause 7.2) until Waterite is satisfied that it is safe for the installation to proceed. Waterite may in agreement with the Client bring forward a proposal for the installation of the Materials for any reason. The specific requirements and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.9 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Waterite against any costs incurred by Waterite as a consequence of such discovery. Under no circumstances will Waterite handle removal of asbestos product.
- 8.10 Waterite shall upon installation ensure that all Materials are to be installed in a manner that is suitable for the intended use of the Materials. Waterite shall be responsible for ensuring that the Materials to be installed in any way which goes against Waterite's recommendations and/or falls below industry standards, a request detailing that requirement must be made in writing to Waterite. Accordingly, Waterite offers no warranty in regard to the aforementioned.
- 8.11 Where the Client has supplied materials for Waterite to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Waterite shall not be responsible for any defects in the materials, any loss or damage to the Materials (or any part thereof), however arising from the use of materials supplied by the Client.
9. **Fire and Theft Mitigation**
 - 9.1 The Client acknowledges and accepts that:
 - (a) the Client's responsibility to have the Fire and Theft Mitigation systems maintained and on a regular basis and such maintenance must be carried out by a suitably experienced and qualified technician; and
 - (b) Waterite is only responsible for Materials that are replaced/supplied by Waterite; and in the event that other parts/goods subsequently fail (including but not limited to, any connected components, lack of water, failure of any mechanical component protection functions either manual or automatic or unscheduled power cuts (that are beyond the control of Waterite)) and/or any other equipment, the Client's representative will ensure that critical fire and theft protection systems are maintained and on a regular basis and such maintenance is carried out on the system.
 - 9.2 Failure to maintain or ensure the safe removal of the same. The Client further agrees to indemnify Waterite against any loss or damage to the system, or caused by the goods, or any part thereof however arising.
10. **Access**
 - 10.1 The Client shall ensure that Waterite has clear and free access to the work site at all times to complete the Works. Waterite shall be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Waterite.
11. **Underground Locations**
 - 11.1 Waterite is only responsible for Materials that are replaced/supplied by Waterite; and in the event that other parts/goods subsequently fail (including but not limited to, any connected components, lack of water, failure of any mechanical component protection functions either manual or automatic or unscheduled power cuts (that are beyond the control of Waterite)) and/or any other equipment, the Client's representative will ensure that critical fire and theft protection systems are maintained and on a regular basis and such maintenance is carried out on the system.
 - 11.2 Whist Waterite will take all care to avoid services under any underground services the Client agrees to indemnify Waterite for any and all liability claims, loss, damage, cost and fines as a result of damage to services not precisely located and notified as per clause 11.1.
 - 11.3 Waterite and the Client agree that ownership of the Materials shall not pass until:
 - (a) the Client has paid Waterite all amounts owing to Waterite; and
 - (b) the Client has met all of its other obligations to Waterite.
 - 11.4 Receipt of any Materials 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.
 - 11.5 It is further agreed that:
 - (a) until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only responsible for the Materials and unless the Materials have become fixtures must return the Materials to Waterite on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Waterite and must pay to Waterite 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 Waterite shall be sufficient evidence of Waterite's rights to receive the insurance proceeds direct from the insurer without the need for any party to make a claim.
 - (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 otherwise part with possession of the Materials, the Client shall be liable for any loss or damage to the Materials and must pay or deliver the proceeds to Waterite on demand.
 - (e) the Client should not convert or process the Materials or intermix them with other goods or use them for any other purpose than that for which the Materials were intended for the benefit of Waterite and must sell, dispose of or return the resulting product to Waterite as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Waterite to enter any premises where Waterite believes the Materials are kept and recover possession of the Materials.
 - (g) Waterite 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 otherwise give away any interest in the Materials while they remain the property of Waterite.
 - (i) Waterite may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
13. **Personal Property Securities Act 1999 ("PPSA")**
 - 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees to:
 - (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 Waterite for Works – that have previously been supplied and that will be supplied in the future by Waterite to the Client.
 - 13.2 The Client undertakes to:
 - (a) complete all payments and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Waterite may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Waterite 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 create, register, or otherwise create, 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 Waterite; and
 - (d) immediately advise Waterite of any material change in its business practices of selling or otherwise disposing of the Materials or any change in the nature of proceeds derived from such sales.
 - 13.3 Waterite and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 122, 126, 127, 129, 131 and 132 of the PPSA.
 - 13.5 Unless otherwise agreed to in writing by Waterite, the Client waives its right to receive a verbal or written acknowledgment of its obligations under section 148 of the PPSA.
 - 13.6 The Client shall unconditionally ratify any actions taken by Waterite under clauses 13.1 to 13.5.
14. **Security and Charge**
 - 14.1 In consideration of Waterite agreeing to supply the Works, 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).
 - 14.2 The Client indemnifies Waterite from and against all Waterite's costs and disbursements including legal costs as a solicitor and against all waterite's costs incurred in exercising Waterite's rights under this clause.
 - 14.3 The Client irrevocably appoints Waterite and each director of Waterite as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause, including, but not limited to, signing any document on the Client's behalf.
15. **Defects in Materials and Returns**
 - 15.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify Waterite of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall not have an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions, the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Waterite has agreed in writing that the Client is entitled to reject, Waterite's liability is limited to either (at Waterite's discretion) replacing the Materials or repaying the Materials.
 - 15.2 The Client is not entitled to return other than in accordance with 15.1 above.
 - 15.3 Non-stock items or Materials made to the Client's specifications are under no circumstances acceptable for return.
16. **Warranties**
 - 16.1 Waterite does not manufacture by Waterite, the warranty shall be the current warranty provided by the manufacturer of the Materials. Waterite shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
 - 16.2 In the case of second hand Materials, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Waterite as to the quality or suitability for any purpose and any implied warranty of statutory nature is expressly excluded. Waterite shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
17. **Consumer Guarantees Act 1993**
 - 17.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Waterite to the Client.
18. **Intellectual Property**
 - 18.1 Where Waterite has designed, drawn, written plans or a schedule of Works, or created any other intellectual property in connection with such works (including, but not limited to, plans, schedules and products shall remain vested in Waterite, and shall only be used by the Client at Waterite's discretion. Under no circumstances may such designs, drawings and other intellectual property be used without the express written approval of Waterite.
 - 18.2 The Client warrants that all designs, specifications or instructions given to Waterite will not cause Waterite to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Waterite against any action taken by a third party in relation to any such infringement.
 - 18.3 The Client agrees that Waterite may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Waterite 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 a further amount of such interest shall compound monthly at such a rate) after as well as the Client's own judgement.
 - 19.2 If the Client owes Waterite any money the Client shall indemnify Waterite from and against all costs and disbursements incurred by Waterite in recovering the debt (including but not limited to the Client's legal costs, solicitor and own client basis, Waterite's collection agency costs, and bank dishonour fees).
 - 19.3 Further to any other rights or remedies Waterite may have under this contract, if a Client has not paid to Waterite the amount of the debt, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Waterite under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
 - 19.4 Without prejudice to any other remedies available to Waterite, Waterite shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Waterite shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to Waterite becomes overdue, or in Waterite's opinion the Client will not be able to make a payment to Waterite;
 - (b) the Client has exceeded any applicable credit limit provided by Waterite;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or processes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) 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 Without prejudice to any other remedies Waterite may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Waterite may suspend or terminate the supply of Works to the Client. The Client will not be entitled to claim any compensation or damages from the Client or its insurers because Waterite has exercised its rights under this clause.
 - 20.2 Waterite may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are lawfully completed by giving written notice to the Client. On giving such notice Waterite shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Waterite for Works already performed. Waterite shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 20.3 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 Waterite as a direct result of the cancellation (including but not limited to, the cost of materials, labour and overheads) and the Client's cancellation of orders for products made to the Client's specifications, or for non-stock items, will definitely not be accepted once production has commenced, or an order has been placed.
 21. **Compliance with Laws**
 - 21.1 The Client and Waterite 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, including any WorkSafe guidelines relating to building/construction sites and any other applicable laws and regulations.
 - 21.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
 - 21.3 The Client shall ensure that any existing plumbing, gasfitting, wiring and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. Waterite reserves the right to halt all Works (in accordance with the provisions of clause 7.2 above) if in their opinion the worksite is unsafe and/or the current positioning of the site is such that existing conditions present a safety hazard to the Client and its staff. This will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Client not wish to proceed Waterite will charge a standard fee.
 - 21.4 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 the Australian and New Zealand Wiring Rules.
 - 21.5 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 Waterite, then Waterite shall notify the Client immediately. The power if isolated will not be re-energised unless the Client has given written notice to Waterite to do so and made a statement 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 satisfaction.
 - 21.6 Any live work or work 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 Safe guidelines" and the Client shall ensure that all workers are properly trained and made safe to Waterite employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to be undertaken to ensure the safety of the workers and additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.
 22. **Construction Contracts Act 2002**
 - 22.1 The Client hereby expressly acknowledges that:
 - (a) the Client has agreed to pay to Waterite within five (5) working days of written notice of its intent to do so 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) scheduled payments under the 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 Waterite by a particular date; and
 - (iv) Waterite has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if Waterite suspends work, it:
 - (i) is not in breach of the construction 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 right to terminate 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 completed with.
 - (c) if the Client exercises its right to suspend the carrying out of that right does not:
 - (i) affect any rights that would otherwise have been available to Waterite 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 the Contract or a direct consequence of Waterite suspending work under this provision.
 23. **Privacy Act 1993**
 - 23.1 The Client consents to Waterite's access to the Client's:
 - (a) access, collect, use and use any information about the Client;
 - (i) including any overdue lines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness;
 - (ii) for the purpose of marketing products and services to the Client;
 - (iii) for the purpose of providing the Client with information about the Client's account directly or obtained by Waterite from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference or debt collection or notifying a default by the Client;
 - (b) Where the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 23.2 The Client shall have the right to request Waterite for a copy of the information about the Client that Waterite holds in its files and to request Waterite to correct any incorrect information about the Client held by Waterite.
 24. **Service of Notices**
 - 24.1 Any written notice given under this contract shall be deemed to have been given and received by the Client:
 - (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) any other method or variation of the terms of the Trust.
 - 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
 25. **Trust**
 - 25.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Waterite may have notice of the Trust, the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and to extend, vary, amend, terminate, suspend or otherwise exercise the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Waterite (Waterite will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any variation or amendment of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the Trust property.
 26. **General**
 - 26.1 Where by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision, if any provision of these terms and conditions shall be invalid, void, illegal or unenforceable in any jurisdiction, the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 26.2 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 Tauranga Courts of New Zealand.
 - 26.3 Waterite 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 Waterite of these terms and conditions (alternatively Waterite's liability shall be limited to the extent of damages which do not exceed the Price of the Works).
 - 26.4 Waterite may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
 - 26.5 The Client shall be bound by the written approval of Waterite.
 - 26.6 Waterite may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Waterite's sub-contractors.
 - 26.7 The Client agrees that Waterite may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client is notified in writing of such changes at such time as the Client makes a further request for Waterite to provide Works to the Client.
 - 26.8 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.
 - 26.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.