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## M & M Wells Limited T/A Mainland Extinguishers – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Service Technician” means M & M Wells Limited T/A Mainland Extinguishers, its successors and assigns or any person acting on behalf of and with the authority of M & M Wells Limited T/A Mainland Extinguishers.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting the Service Technician to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by the Service Technician 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 (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Service Technician 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 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 the Service Technician.
- 2.3 Any advice, recommendation, information, assistance or service provided by the Service Technician in relation to Goods or Services supplied is given in good faith, is based on the Service Technician’s own knowledge and experience and shall be accepted without liability on the part of the Service Technician and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Service Technician and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Service Technician reserves the right to refuse delivery and/or request an alternative payment method.
- 2.6 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Service Technician reserves the right to vary the Price with alternative Goods as per clause 5.2.
- 2.7 The commencement date shall be the date on the Service Agreement form. Fixed Term Contracts shall be for the period (“initial term”) as agreed between both parties and shall be reviewed automatically, thereafter, for like periods (“additional terms”), unless agreed otherwise until terminated by either party by giving the required notice of not less than thirty (30) notice prior to the expiration date of the initial term or any additional term.
- 2.8 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. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Service Technician shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Service Technician 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 the Service Technician in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Service Technician; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Client shall give the Service Technician 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, change of trustees or business practice). The Client shall be liable for any loss incurred by the Service Technician as a result of the Client’s failure to comply with this clause.

### 5. Price and Payment

- 5.1 At the Service Technician’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Service Technician to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to the Service Technician’s current price list; or
  - (c) the Service Technician’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 The Service Technician reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site/building defects, health hazards and safety equipment, hidden pipes and wiring in walls, delays in shipment etc.) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to the Service Technician in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Service Technician in the cost of taxes, levies, freight and insurance charges which are beyond the Service Technician’s control.
- 5.3 Variations will be charged for on the basis of the Service Technician’s quotation, and will be detailed in writing, and shown as variations on the Service Technician’s invoice. The Client shall be required to respond to any variation submitted by the Service Technician within ten (10)

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## M & M Wells Limited T/A Mainland Extinguishers – Terms & Conditions of Trade

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- working days. Failure to do so will entitle the Service Technician to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Service Technician's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Service Technician, which may be:
- on delivery of the Goods;
  - before delivery of the Goods;
  - by way of instalments/progress payments in accordance with the Service Technician's payment schedule;
  - 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;
  - the date specified on any invoice or other form as being the date for payment; or
  - failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Service Technician.
- 5.6 Payment may be made by cash, cheque, electronic/on-line banking, credit card (acceptance of VISA and MasterCard only at the depot and a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Service Technician.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Service Technician nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Service Technician an amount equal to any GST the Service Technician must pay for any supply by the Service Technician under this or any other contract 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 of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- the Client or the Client's nominated carrier takes possession of the Goods at the Service Technician's address; or
  - the Service Technician (or the Service Technician's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 Subject to clause 6.3 it is the Service Technician's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.3 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Service Technician claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Service Technician's control, including but not limited to any failure by the Client to:
- make a selection; or
  - have the site ready for the Services; or
  - notify the Service Technician that the site is ready.
- 6.4 At the Service Technician's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.5 The Service Technician may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 Any time specified by the Service Technician for delivery of the Goods is an estimate only and the Service Technician will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Service Technician is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Service Technician shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Service Technician is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Service Technician is sufficient evidence of the Service Technician's rights to receive the insurance proceeds without the need for any person dealing with the Service Technician to make further enquiries.
- 7.3 If the Client requests the Service Technician to leave Goods outside the Service Technician'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.
- 7.4 Where the Service Technician 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 the Service Technician 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 In the event that the Service Technician discovers asbestos/hazardous materials whilst undertaking any Services the Service Technician 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 the Service Technician as a result of the discovery of asbestos/hazardous materials and/or any suspension of Services in relation thereto.
- 7.6 The Service Technician 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, the Service Technician accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.7 The Client acknowledges that:
- all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Service Technician's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client

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## M & M Wells Limited T/A Mainland Extinguishers – Terms & Conditions of Trade

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shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Service Technician;

- (b) while the Service Technician may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Service Technician has given these in good faith, and are estimates industry prescribed estimates under optimal operating conditions.

7.8 The Client accepts that electronic 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.  
(c) do not guarantee that the site will be free from any water damage as a result of said equipment being used either in a correct manner or not, or damage or loss caused by fire or smoke.

### 8. Client's Responsibilities

8.1 Prior to the Service Technician commencing the Services the Client must advise the Service Technician of the precise location of all services on the site and clearly mark the same. The mains and 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 the site. Whilst the Service Technician will take all care to avoid damage to any underground services, the Client agrees to indemnify the Service Technician 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 this clause 8.1.

8.2 It is the Client's responsibility to:

- (a) ensure that the Service Technician has clear and free access to the work site at all times to enable them to deliver the Goods. The Service Technician shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Service Technician; and  
(b) remove any furniture or personal items from the vicinity of the Services, and agrees that the Service Technician shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and  
(c) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.

### 9. Title

9.1 The Service Technician and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid the Service Technician all amounts owing to the Service Technician; and  
(b) the Client has met all of its other obligations to the Service Technician.

9.2 Receipt by the Service Technician 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.

9.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:

- (a) the Client is only a bailee of the Goods and must return the Goods to the Service Technician on request.  
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Service Technician and must pay to the Service Technician 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 the Service Technician and must pay or deliver the proceeds to the Service Technician 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 the Service Technician and must sell, dispose of or return the resulting product to the Service Technician as it so directs.  
(e) the Client irrevocably authorises the Service Technician to enter any premises where the Service Technician believes the Goods are kept and recover possession of the Goods.  
(f) the Service Technician 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 the Service Technician.  
(h) the Service Technician may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 10. Personal Property Securities Act 1999 ("PPSA")

10.1 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 and/or collateral (account) – being a monetary obligation of the Client to the Service Technician for Services – that have previously been supplied and that will be supplied in the future by the Service Technician to the Client.

10.2 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 the Service Technician may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;  
(b) indemnify, and upon demand reimburse, the Service Technician 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, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Service Technician; and  
(d) immediately advise the Service Technician 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.

10.3 The Service Technician and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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## M & M Wells Limited T/A Mainland Extinguishers – Terms & Conditions of Trade

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- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Service Technician, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by the Service Technician under clauses 10.1 to 10.5.

### 11. Security and Charge

- 11.1 In consideration of the Service Technician 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 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).
- 11.2 The Client indemnifies the Service Technician from and against all the Service Technician's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Service Technician's rights under this clause.
- 11.3 The Client irrevocably appoints the Service Technician and each director of the Service Technician as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

### 12. Defects

- 12.1 The Client shall inspect the Goods on delivery and shall within twelve (12) months of delivery (time being of the essence) notify the Service Technician of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Service Technician 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 the Service Technician has agreed in writing that the Client is entitled to reject, the Service Technician's liability is limited to either (at the Service Technician's discretion) replacing the Goods or repairing the Goods.
- 12.2 Goods will not be accepted for return other than in accordance with 12.1 above, and provided that:
- (a) the Service Technician has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within twelve (12) months of the delivery date; and
  - (c) the Service Technician will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 12.3 The Service Technician may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 12.4 Subject to clause 12.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

### 13. Warranty

- 13.1 Subject to the conditions of warranty set out in clause 13.2 the Service Technician warrants that if any defect in any workmanship of the Service Technician becomes apparent and is reported to the Service Technician within twelve (12) months of the date of delivery (time being of the essence) then the Service Technician will either (at the Service Technician's sole discretion) replace or remedy the workmanship.
- 13.2 The conditions applicable to the warranty given by clause 13.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Goods; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Service Technician; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the Service Technician shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Service Technician's consent.
  - (c) in respect of all claims the Service Technician shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 13.3 For Goods not manufactured by the Service Technician, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Service Technician 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.

### 14. Consumer Guarantees Act 1993

- 14.1 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 the Service Technician to the Client.

### 15. Intellectual Property

- 15.1 Where the Service Technician has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Service Technician. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Service Technician.
- 15.2 The Client warrants that all designs, specifications or instructions given to the Service Technician will not cause the Service Technician to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Service Technician against any action taken by a third party against the Service Technician in respect of any such infringement.
- 15.3 The Client agrees that the Service Technician may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Service Technician has created for the Client.

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## M & M Wells Limited T/A Mainland Extinguishers – Terms & Conditions of Trade

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### 16. Default and Consequences of Default

- 16.1 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 the Service Technician's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes the Service Technician any money the Client shall indemnify the Service Technician from and against all costs and disbursements incurred by the Service Technician in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Service Technician's collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Service Technician may have under this contract, if a Client has made payment to the Service Technician, 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 the Service Technician under this clause 16 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.
- 16.4 Without prejudice to the Service Technician's other remedies at law the Service Technician shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Service Technician shall, whether or not due for payment, become immediately payable if:
- any money payable to the Service Technician becomes overdue, or in the Service Technician's opinion the Client will be unable to make a payment when it falls due;
  - the Client has exceeded any applicable credit limit provided by the Service Technician;
  - 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 17. Cancellation

- 17.1 Without prejudice to any other remedies the Service Technician may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Service Technician may suspend or terminate the supply of Goods to the Client. The Service Technician will not be liable to the Client for any loss or damage the Client suffers because the Service Technician has exercised its rights under this clause.
- 17.2 The Service Technician 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 the Service Technician shall repay to the Client any money paid by the Client for the Goods. The Service Technician shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that either party to this agreement wishes to cancel a fixed term contract, then the party that wishes to exercise this right must do so by advising the other party in writing giving not less than the required notice defined in the contract in accordance with clause 2.7.
- 17.4 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 the Service Technician as a direct result of the cancellation (including, but not limited to, any loss of profits).

### 18. Privacy Act 1993

- 18.1 The Client authorises the Service Technician or the Service Technician's agent to:
- access, collect, retain and use any information about the Client;
    - (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - for the purpose of marketing products and services to the Client.
  - disclose information about the Client, whether collected by the Service Technician from the Client directly or obtained by the Service Technician 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.
- 18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Client shall have the right to request the Service Technician for a copy of the information about the Client retained by the Service Technician and the right to request the Service Technician to correct any incorrect information about the Client held by the Service Technician.

### 19. Compliance with Laws

- 19.1 The Client and the Service Technician 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 any WorkSafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 19.2 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Services.

### 20. Construction Contract Act 2002

- 20.1 The Client hereby expressly acknowledges that:
- the Service Technician 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:
    - the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
    - 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
    - the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Service Technician by a particular date; and
    - the Service Technician has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
  - if the Service Technician suspends work, it:

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## M & M Wells Limited T/A Mainland Extinguishers – Terms & Conditions of Trade

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- (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 the Service Technician exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Service Technician 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 the Service Technician suspending work under this provision.

### 21. Service of Notices

- 21.1 Any written notice given under this contract shall be deemed to have been given and received:
- (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) if sent by email to the other party's last known email address.
- 21.2 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.

### 22. Trusts

- 22.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Service Technician may have notice of the Trust, the Client covenants with the Service Technician as follows:
- (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 the provisions of the Trust do not purport to exclude or take away 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 the Service Technician (the Service Technician 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 alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

### 23. General

- 23.1 The failure 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 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 Nelson Courts of New Zealand.
- 23.3 The Service Technician 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 the Service Technician of these terms and conditions (alternatively the Service Technician's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 The Service Technician may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of the Service Technician.
- 23.6 The Service Technician may elect to subcontract out any part of the Services 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 the Service Technician's sub-contractors without the authority of the Service Technician.
- 23.7 The Client agrees that the Service Technician 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 accepts such changes, or otherwise at such time as the Client makes a further request for the Service Technician to provide Goods to the Client.
- 23.8 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.
- 23.9 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.