

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Service King”** means Umbrella Enterprise Limited T/A Service King, its successors and assigns or any person acting on behalf of and with the authority of Umbrella Enterprise Limited T/A Service King.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Service King to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Incidental Items”** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by Service King in the course of it conducting, or supplying to the Customer, any Services.
- 1.5 **“Services”** means all Services supplied by Service King to the Customer at the Customer’s request from time to time.
- 1.6 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using Service King’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.8 **“Price”** means the price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between Service King and the Customer in accordance with clause 5 of this Contract.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by Service King.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a credit application with Service King and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Service King reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Service King 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 Service King 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 Service King 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 Service King; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give Service King not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Service King as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Service King’s sole discretion the Price shall be either:
(a) as indicated on any invoice provided by Service King to the Customer; or
(b) the Price as at the date of delivery of the Services according to Service King’s current price list; or
(c) Service King’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 Service King reserves the right to change the Price if a variation to Service King’s estimate or quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required after an inspection due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, extra treatment or procedures required for bio-hazardous or other particular stain removal or as a result of any increase to Service King’s in the cost of materials and labour) will be charged for on the basis of Service King’s estimate or quote and will be shown as variations on the invoice.

- Payment for all variations must be made in full at their time of completion.
- 5.3 At Service King's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by Service King, which may be:
- (a) on delivery of the Services;
 - (b) before delivery of the Services;
 - (c) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Service King.
- 5.5 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and Service King.
- 5.6 Service King may in its discretion allocate any payment received from the Customer towards any invoice that Service King determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Service King may re-allocate any payments previously received and allocated.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Service King 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 Customer must pay to Service King an amount equal to any GST Service King must pay for any supply by Service King under this or any other agreement for providing Service King's Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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. Provision of the Services**
- 6.1 At Service King's sole discretion delivery of the Services shall take place when the Services are supplied to the Customer at the Customer's nominated address.
- 6.2 Subject to clause 6.3 it is Service King'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 Service King claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Service King's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Service King that the site is ready.
- 6.4 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.
- 6.5 Any time specified by Service King for delivery of the Services is an estimate only and Service King will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that Service King is unable to supply the Services as agreed solely due to any action or inaction of the Customer then Service King shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 7. Risk**
- 7.1 Irrespective of whether Service King retains ownership of any Incidental Items all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as Service King may repossess the Incidental Items. The Customer must insure all Incidental Items on or before delivery.
- 7.2 The Customer acknowledges that in some instances pertaining to stain removal that repeated applications of treatments may be required. Although Service King shall take all due care, some residual fading of fabrics or other porous surfaces may result from such repeated spot treatments.
- 8. Access**
- 8.1 The Customer shall ensure that Service King has clear and free access to the work site at all times to enable them to undertake the Services. Service King shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, carpets or covered surfaces, floors or wall linings) unless due to the negligence of Service King.
- 9. Compliance With Laws**
- 9.1 The Customer and Service King 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 health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 9.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 9.3 Notwithstanding clause 9.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Service King agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.
- 10. Title**
- 10.1 Service King and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:

- (a) the Customer has paid Service King all amounts owing for the Services; and
 - (b) the Customer has met all other obligations due by the Customer to Service King in respect of all contracts between Service King and the Customer.
- 10.2 Receipt by Service King 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 and until then Service King's ownership or rights in respect of the Incidental Items shall continue.
- 10.3 It is further agreed that:
- (a) the Customer is only a bailee of the Incidental Items and must return the Incidental Items to Service King immediately upon request by Service King;
 - (b) the Customer holds the benefit of the Customer's insurance of the Incidental Items on trust for Service King and must pay to Service King the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Customer sells, disposes or parts with possession of the Incidental Items then the Customer must hold the proceeds of sale of the Incidental Items on trust for Service King and must pay or deliver the proceeds to Service King on demand;
 - (d) the Customer should not convert or process the Incidental Items or intermix them with other goods, but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Service King and must dispose of or return the resulting product to Service King as Service King so directs;
 - (e) the Customer shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of Service King; and
 - (f) the Customer irrevocably authorises Service King to enter any premises where Service King believes the Incidental Items are kept and recover possession of the Incidental Items.
- 11. Personal Property Securities Act 1999 ("PPSA")**
- 11.1 Upon assenting to these terms and conditions in writing the Customer 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 Incidental Items and/or collateral (account) – being a monetary obligation of the Customer to Service King for Services – that have previously been supplied and that will be supplied in the future by Service King to the Customer.
- 11.2 The Customer 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 Service King may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Service King for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of Service King.
- 11.3 Service King and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by Service King, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Customer shall unconditionally ratify any actions taken by Service King under clauses 11.1 to 11.5.
- 11.7 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12. Security and Charge**
- 12.1 In consideration of Service King agreeing to supply Services, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies Service King from and against all Service King's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Service King's rights under this clause.
- 12.3 The Customer irrevocably appoints Service King and each director of Service King as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.
- 13. Defects**
- 13.1 The Customer shall inspect the Services on delivery and shall within five (5) days of delivery notify Service King of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford Service King an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 13.2 For defective Services, which Service King has agreed in writing that the Customer is entitled to reject, Service King's liability is limited to either (at Service King's discretion) replacing the Services or rectifying the Services provided that the Customer has complied with the provisions of clause 13.1.
- 14. Consumer Guarantees Act 1993**
- 14.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("**CGA**") do not apply to the supply of Services by Service King to the Customer.

15. Intellectual Property

15.1 Where Service King has designed, drawn or developed Incidental Items for the Customer, then the copyright in any Incidental Items shall remain the property of Service King. Under no circumstances may such designs, drawings and documents be used without the express written approval of Service King.

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 Service King's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Customer owes Service King any money the Customer shall indemnify Service King from and against all costs and disbursements incurred by Service King in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Service King's collection agency costs, and bank dishonour fees).

16.3 Further to any other rights or remedies Service King may have under this Contract, if a Customer has made payment to Service King, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Service King under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

16.4 Without prejudice to Service King's other remedies at law Service King shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Service King shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Service King becomes overdue, or in Service King's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by Service King;
- (c) the Customer 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Cancellation

17.1 Without prejudice to any other remedies Service King may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Service King may suspend or terminate the supply of Services to the Customer. Service King will not be liable to the Customer for any loss or damage the Customer suffers because Service King has exercised its rights under this clause.

17.2 Service King may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice Service King shall repay to the Customer any money paid by the Customer for the Services. Service King shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.3 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Service King as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. Privacy Policy

18.1 All emails, documents, images or other recorded information held or used by Service King is Personal Information as defined and referred to in clause 18.3 and therefore considered confidential. Service King acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Service King acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Service King that may result in serious harm to the Customer, Service King will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to Service King in respect of Cookies where the Customer utilises Service King's website to make enquiries. Service King agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Service King when Service King sends an email to the Customer, so Service King may collect and review that information ("collectively Personal Information")

If the Customer consents to Service King's use of Cookies on Service King's website and later wishes to withdraw that consent, the Customer may manage and control Service King's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

18.3 The Customer authorises Service King or Service King's agent to:

- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.

- (b) disclose information about the Customer, whether collected by Service King from the Customer directly or obtained by Service King 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 Customer.
- 18.4 Where the Customer is an individual the authorities under clause 18.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 18.5 The Customer shall have the right to request (by e-mail) from Service King, a copy of the Personal Information about the Customer retained by Service King and the right to request that Service King correct any incorrect Personal Information.
- 18.6 Service King will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.7 The Customer can make a privacy complaint by contacting Service King via e-mail. Service King will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

19. Service of Notices

- 19.1 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.
- 19.2 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.

20. Trusts

- 20.1 If the Customer 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 Service King may have notice of the Trust, the Customer covenants with Service King as follows:
 - (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Service King (Service King will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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.

21. General

- 21.1 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.
- 21.2 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 Auckland Courts, New Zealand.
- 21.3 Except to the extent permitted by law "CGA", Service King shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Service King of these terms and conditions (alternatively Service King's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 21.4 Service King may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of Service King.
- 21.6 Service King 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 Customer agrees and understands that they have no authority to give any instruction to any of Service King's sub-contractors without the authority of Service King.
- 21.7 The Customer agrees that Service King may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Service King to provide Services to the Customer.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 21.9 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.