

**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 **“Utrex”** means Utrex Limited, its successors and assigns or any person acting on behalf of and with the authority of Utrex Limited.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Utrex 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 **“Goods”** means all Goods or Services supplied by Utrex to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Equipment”** means all Equipment including any accessories supplied on hire by Utrex to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Utrex to the Customer.
- 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 Utrex’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 Goods or Services as agreed between Utrex and the Customer in accordance with clause 6 below.

**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 delivery of the Goods.
- 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 Goods on credit shall not take effect until the Customer has completed a credit application with Utrex and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Utrex reserves the right to refuse delivery.
- 2.6 The Customer authorises Utrex to remove any floor coverings, paint, fixtures or fittings that they deem necessary in order to complete any decontamination processes.
- 2.7 The Customer acknowledges and accepts that the area being treated will be inaccessible for the duration of the decontamination process and no animals or people can access this area at any time. Should emergency access be required, liaison must be made with Utrex to facilitate access in this instance.
- 2.8 The Customer accepts that Utrex shall reserve the right to have a third party to verify test results if necessary.
- 2.9 None of Utrex’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Utrex in writing nor is Utrex bound by any such unauthorised statements.
- 2.10 The Customer shall indemnify Utrex for any acts or omissions by the Customer either before or after engagement of Utrex and which were not specifically indicated in briefs to Utrex.
- 2.11 Utrex certifies that their employees have no interest, present or contemplated, in the property and no involvement with trades people or benefits derived from any sales, leases or rentals. Any advice, recommendation, information, report, assistance or service provided by Utrex in relation to Services supplied is given in good faith, is based on Utrex’s own knowledge and experience (or that of any third party engaged by Utrex) and shall be accepted without liability on the part of Utrex.
- 2.12 It is not Utrex’s policy to provide oral advice, as a written report is always provided. If the Customer requests Utrex to give oral advice, Utrex will not accept liability for errors or omissions due to any oversight or misinterpretation on the Customer’s part for oral advice provided.
- 2.13 These terms and conditions may be meant to be read in conjunction with Utrex’s Hire Form, and where the context so permits, the terms ‘Services’ or ‘Goods’ shall include any supply of Equipment, as defined therein.
- 2.14 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. Authorised Representatives**

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to Utrex as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Services on the Customer’s behalf and/or to request any variation to the Services on the Customer’s behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies Utrex in writing that said person is no longer the Customer’s duly authorised representative).

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- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Utrex in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to Utrex for all additional costs incurred by Utrex (including Utrex's profit margin) in providing any Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1 The Customer acknowledges and accepts that Utrex 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 Utrex 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 Utrex in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Utrex; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Change in Control**
- 5.1 The Customer shall give Utrex 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 and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Utrex as a result of the Customer's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At Utrex's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Utrex to the Customer; or
  - (b) Utrex's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Utrex 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, limitations to accessing the site, safety considerations, deeper levels of contamination uncovered, due to unexpected delays, or receipt of approvals or permits, access to an assessment area not being available as was agreed or when pre-arranged, following assessment, quantitative testing, warping of materials, scorching during welding, misalignment during cutting, inaccurate measurements prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
  - (d) if during the course of the Services, the Goods cease to be available or delayed from Utrex's third party suppliers, then Utrex reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
  - (e) in the event of increases to Utrex in the cost of labour or materials (including but not limited to, overseas transactions that may increase, as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Utrex's control.
- 6.3 Variations will be charged for on the basis of Utrex's quotation, and will be detailed in writing, and shown as variations on Utrex's invoice. The Customer shall be required to respond to any variation submitted by Utrex within ten (10) working days. Failure to do so will entitle Utrex 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.
- 6.4 At Utrex's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Utrex, which may be:
- (a) on or before delivery of the Goods; or
  - (b) on completion of the Services;
  - (c) by way of instalments/progress payments in accordance with Utrex's payment schedule;
  - (d) for certain approved Customers, 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;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Utrex.
- 6.6 Payment may be made by cash, cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Utrex.
- 6.7 Utrex may in its discretion allocate any payment received from the Customer towards any invoice that Utrex determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Utrex may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Utrex, payment will be deemed to be allocated in such manner as preserves the maximum value of Utrex's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 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 Utrex nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Utrex an amount equal to any GST Utrex must pay for any supply by Utrex under this or any other contract for the sale of the Goods. 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.

**7. Delivery of Goods**

- 7.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at Utrex’s address; or
  - (b) Utrex (or Utrex’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 7.2 At Utrex’s sole discretion the cost of Delivery is in addition to the Price.
- 7.3 Utrex 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.
- 7.4 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Utrex will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.

**8. Provision of the Services**

- 8.1 Subject to clause 8.2 it is Utrex’s responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services’ commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Utrex claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Utrex’s control, including but not limited to any failure by the Customer to:
- (a) have the site ready for the Services; or
  - (b) notify Utrex that the site is ready.
- 8.3 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 Utrex is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then Utrex shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 8.4 It shall be the responsibility of the Customer to fulfil any special conditions / requirements that may affect Utrex providing the Services at the site (including, but not limited to, health and safety equipment and/or work site inductions).
- 8.5 Ultra shall not be responsible for any loss of productivity the Customer may suffer through the period of Ultra providing the Services.

**9. Inspection, Report Scope and Limitation**

- 9.1 The report expresses the opinions of Utrex, based upon their impressions and assessment of the conditions that existed at the time of the inspection only.
- 9.2 The inspection and report are not intended to be technically exhaustive, or to imply that every component was inspected, or that every possible contaminate was discovered.
- 9.3 All components and conditions which by the nature of their location are concealed, deliberately hidden, camouflaged or difficult to inspect are excluded from the report.
- 9.4 Any suggestions or recommendations contained in the report are suggestion only. It shall be the responsibility of the person or persons carrying out treatment work to ensure the most appropriate remedy is carried out in conjunction with any further discoveries, and any necessary local authority consents obtained prior to proceeding with remedial work.
- 9.5 Matters which are not within the scope of the inspection under the standards include, but are not limited to:
- (a) testing of soil other than outlined;
  - (b) lead testing other than outlined;
  - (c) asbestos other than outlined;
  - (d) toxic and other health or environmental hazards other than outlined;
  - (e) the conditions of any internal plumbing, any systems which are shut down or otherwise secured, water wells (i.e. water quality and quantity) other than outlined.
- 9.6 The inspection and report should not be construed as a compliance inspection of any property, legal or territory authority standards, codes or regulations, other than if outlined. The report is not intended to be a warranty or guarantee of the present or future adequacy of the property, its systems, or their component parts. The report does not constitute any express or implied warranty or fitness for use regarding the condition of the property or equipment and it should not be relied upon as such. Any opinions expressed regarding adequacy, are general statements. From time to time environmental, and other contamination standards can be, or will be set to New Zealand standards, these contamination levels can change at any time and without notice.
- 9.7 The Customer accepts that Utrex will not detect some contamination because:
- (a) the contamination only occurs intermittently;
  - (b) part of the equipment has not been used for a while and the contamination usually occurs after regular use (or detection of the contamination would only occur after regular use);
  - (c) the type of condition that would normally reveal the contamination is not prevailing at, or around, the time of the inspection
  - (d) the contamination has been deliberately concealed;
  - (e) furnishings are obscuring the contamination;
  - (f) Utrex has been given incorrect information by the Customer, or any other person. The contamination is/was not apparent on a visual inspection or surface test.
- 9.8 The report provided by Utrex is for assessment only, the levels for testing are outlined in Utrex inspection form for the equipment, non-invasive inspection of the areas of the equipment which are readily visible at the time of inspection. The inspection will not include any:
- (a) areas or components which are concealed or closed in behind finished surfaces or which required the moving of anything which impeded access or limited visibility;
  - (b) as the purpose of this inspection is to assess the general condition of the equipment based on the limited visual inspection and assessment described in (a) this report may not identify all past, present or future contamination, any area or component of the equipment or any item or system not specifically identified in Utrex report as having been inspected was excluded from the scope of the inspection.

**10. Risk**

- 10.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Utrex is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Utrex is sufficient evidence of Utrex's rights to receive the insurance proceeds without the need for any person dealing with Utrex to make further enquiries.
- 10.3 If the Customer requests Utrex to leave Goods outside Utrex's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 10.4 Utrex shall not be held liable for any loss or damage that may arise should the Customer fail to follow the instructions for use of the Goods as disclosed on the Goods and/or the Good's packaging.
- 10.5 The Customer acknowledges that in some instances pertaining to stain removal that repeated applications of treatments may be required. Although Utrex shall take all due care, some residual fading of fabrics or other porous surfaces may result from such repeated spot treatments.
- 10.6 Where Utrex is requested to clean or treat aged, oxidized, degraded or damaged equipment, the Customer acknowledges and accepts that chemical cleaning these surfaces may expose further damage and may reduce the integrity of the surface. Utrex will not be held liable for the costs of repair or remedy of any surface where the damage occurs or consequential loss.
- 10.7 The Customer shall indemnify Utrex against any damage to floors or equipment where the Customer fails to follow Utrex's recommendations on how to clean and maintain floors or equipment.
- 10.8 The Customer warrants that the structure of the premises or equipment in or upon which the materials or Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Utrex shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 10.9 The Customer acknowledges and agrees that:
- (a) Utrex shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer and in the event that any of this information provided by the Customer is inaccurate, Utrex accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information; and
  - (b) that Utrex is only responsible for parts that are replaced/supplied by Utrex and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify Utrex against any loss or damage to the materials or Goods, or caused thereby, or any part thereof howsoever arising
- 10.10 Utrex shall:
- (a) be indemnified against any scratches on surfaces that result from the provision of the Services due to removal of abrasive materials, debris, acid or that were pre-existing; and
  - (b) not be responsible for the disposal of health risk items, however, the removal of these items by Utrex may (at the sole discretion of Utrex) be charged to the Customer in addition to the Price; and
  - (c) not be liable for any existing defects revealed by Utrex during the provision of the Services. Any existing defects revealed shall be reported to the Customer by Utrex on completion of the Services and
  - (d) not be held responsible for any damage to the site caused by any third party (including, but not limited to, pets or tradesmen).
- 10.11 Utrex reserves the right to touch-up all products supplied and installed on the site to rectify minor blemishes or damage to paintwork.
- 10.12 Utrex may cease the provision of the Services either before or during the Services, where Utrex, at Utrex's sole discretion, deems the following to pose or present a risk to Utrex's and/or Utrex's employees' health and safety:
- (a) any materials or equipment provided by the Customer; and/or
  - (b) any of the Services.
- 10.13 It is the responsibility of the Customer:
- (a) to ensure that the work area and surrounds are protected and free from hazards (including but not limited to flammable materials), fume extracted and ventilated. Utrex accepts no liability whatsoever in this respect; and
  - (b) that where isolation and/or disconnection of overhead powerlines (or shrouding) are required to facilitate the supply of materials/Goods and/or Services under this Contract; and
  - (c) that they shall remove any tangible items susceptible to damage from the vicinity of the Services (and provide protection where necessary), and agrees that Utrex shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
- 10.14 The Customer accepts and acknowledges that Utrex accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage, excess residue or over spray) to or onto the Customer's property, vehicles or any other property, which may occur during the cleaning or painting process of the Services. It shall be the Customer's responsibility that they remove any tangible items susceptible to damage from the vicinity of the Services (and provide protection where necessary), and agrees that Utrex shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.

**11. Hazardous Products**

- 11.1 Both the Customer and Utrex agree that they will at all times ensure that they 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 occupational health and safety laws, and any other relevant safety standards or legislation, particularly those in relation to hazardous products and the safe removal and disposal of the same.

**12. Access**

- 12.1 It is the responsibility of the Customer to ensure that clear access to and from the site and that access is suitable to accept Utrex's vehicles or any other equipment as may be deemed necessary by Utrex. The Customer shall pay the cost of replacement, repair or rectification to any paths, driveways, and access routes to the property. The Customer shall also be liable for all costs associated with any delays due to access unless otherwise specified at the time of quoting.

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- 12.2 Access within the property needs to be safe and unobstructed. If a minimum clearance is not available, the area of inspection must be within Utrex's unobstructed line of vision.
- 12.3 The Customer acknowledges and agrees that:
- (a) Utrex shall have uninterrupted full access to the site until such time as the Services have been completed and all Utrex's equipment has been removed; and
  - (b) all instructions and directives that Utrex provides concerning isolating the equipment and/or plant (including, but not limited to, mechanical, physical or electrical disconnection) that is to be maintained on the site, must be adhered to and Utrex does not accept liability for any loss or damage due to the Customer's failure to adhere to this clause.
- 13. Compliance with Laws**
- 13.1 The Customer and Utrex 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.
- 13.2 All subsequent lab testing required as part of the Services will be carried out by a registered IANZ (International Accreditation New Zealand) facility.
- 13.3 The Customer agrees that the site will comply with any WorkSafe guidelines and Health and Safety at Work Act relating to building/construction sites and any other relevant safety standards or legislation.
- 13.4 The Customer shall advise Utrex of the precise location of all known risks present on the site, and where applicable, induct Utrex's workers (including any sub-contractors as required), on:
- (a) any WorkSafe management system;
  - (b) site safety expectations;
  - (c) emergency provisions;
  - (d) risks and their control measures; and
  - (e) incident reporting expectations.
- 14. Title**
- 14.1 Utrex and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Utrex all amounts owing to Utrex; and
  - (b) the Customer has met all of its other obligations to Utrex.
- 14.2 Receipt by Utrex 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.
- 14.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 14.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Utrex on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Utrex and must pay to Utrex the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Utrex and must pay or deliver the proceeds to Utrex on demand;
  - (d) the Customer should not convert or process the Goods 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 Utrex and must sell, dispose of or return the resulting product to Utrex as it so directs;
  - (e) the Customer irrevocably authorises Utrex to enter any premises where Utrex believes the Goods are kept and recover possession of the Goods;
  - (f) Utrex may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Customer 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 Utrex; and
  - (h) Utrex may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 15. Personal Property Securities Act 1999 ("PPSA")**
- 15.1 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 Goods and/or collateral (account) – being a monetary obligation of the Customer to Utrex for Services – that have previously been supplied and that will be supplied in the future by Utrex to the Customer.
- 15.2 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 Utrex may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Utrex 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 Utrex; and
  - (d) immediately advise Utrex 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.
- 15.3 Utrex and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

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- 15.5 Unless otherwise agreed to in writing by Utrex, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Customer shall unconditionally ratify any actions taken by Utrex under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 16. Security and Charge

- 16.1 In consideration of Utrex agreeing to supply the Goods, 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).
- 16.2 The Customer indemnifies Utrex from and against all Utrex's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Utrex's rights under this clause.
- 16.3 The Customer irrevocably appoints Utrex and each director of Utrex as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

### 17. Defects

- 17.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Utrex of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Utrex an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Utrex has agreed in writing that the Customer is entitled to reject, Utrex's liability is limited to either (at Utrex's discretion) replacing the Goods or repairing the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) Utrex has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
  - (c) Utrex 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.
- 17.3 Utrex may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.
- 17.4 Subject to clause 17.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

### 18. Warranty

- 18.1 Subject to the conditions of warranty set out in clause 18.2 Utrex warrants that if any defect in any workmanship of Utrex becomes apparent and is reported to Utrex within twelve (12) months of the date of Delivery (time being of the essence) then Utrex will either (at Utrex's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 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 Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Utrex; 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 Utrex shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Utrex's consent.
  - (c) in respect of all claims Utrex shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 18.3 For Goods not manufactured by Utrex, the warranty shall be the current warranty provided by the manufacturer of the Goods. Utrex 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.
- 18.4 In the case of second hand Goods, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by Utrex as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Utrex shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

### 19. Industrial Chemical Cleaning Liability Disclaimer

#### 19.1 Disclaimer of Liability

The client acknowledges that industrial chemical cleaning involves the use of specialised formulations designed to remove heavy contaminants, scale, corrosion, residues, and other industrial byproducts. These chemicals may interact unpredictably with equipment, piping, coatings, seals, gaskets, electrical components, structural materials, or any surface whose composition, condition, or prior treatment is unknown or not fully disclosed. The service provider exercises industry standard care but cannot guarantee that all materials will tolerate chemical exposure without adverse effects.

#### 19.2 Assumption of Risk

By authorising the service, the client accepts all inherent risks associated with industrial chemical cleaning. These risks include, but are not

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limited to: corrosion acceleration, surface etching, coating degradation, seal or gasket failure, unexpected chemical reactions, equipment malfunction or operational downtime resulting from cleaning activities. The client acknowledges that preexisting wear, hidden defects, incompatible materials, or residual contaminants may increase the likelihood or severity of such outcomes.

### 19.3 Limitation of Liability

To the fullest extent permitted by law, the service provider is not liable for any direct, indirect, incidental, special, or consequential damages arising from or related to the industrial chemical cleaning process. This includes, without limitation damage to machinery or components, loss of production, contamination of product lines, failure of components, environmental impacts, or any failure resulting preexisting conditions or undisclosed vulnerabilities. The client agrees that the service provider's total liability, if any, shall not exceed the amount paid for the specific cleaning service performed. Nothing in this clause limits or excludes liability for fraud, deliberate misconduct, or willful breach.

### 19.4 Client Responsibilities

The client agrees to provide accurate, complete, and timely information regarding equipment materials, coatings, system history, operational conditions, prior chemical treatments, and any known vulnerabilities or structural concerns. This includes supplying relevant safety data sheets, system schematics and operational documentation. Failure to disclose such information may void any implied assurances regarding cleaning outcomes and may result in additional risk borne solely by the client.

The client further acknowledges that they have reviewed and approved the proposed cleaning methods, chemicals, and procedures and have confirmed their suitability for the intended application and process.

### 19.5 Operational Conditions and Access

The client is responsible for ensuring safe access, isolation, lockout/tagout, ventilation, and any required shutdown or safety procedures necessary the service provided to perform the work. The service provider is not responsible for damage, delays, or hazards arising from inadequate site preparation, or unsafe operating conditions, or environmental factors beyond its control.

Any changes to system configuration, operating conditions, or materials after approval of the service plan may affect results and void any implied assurances.

### 19.6 Indemnification

The client agrees to indemnify, defend, and hold the service provider, its employees, and contractors harmless from any claims, losses, damages, liabilities, penalties, or expenses arising out of or related to (a) the client's failure to provide accurate system information; (b) pre-existing defects or unsafe conditions, (c) third-party claims connected to the cleaning work, or (d) the client's breach of these terms. This obligation applies regardless of cause, except to the extent prohibited by law.

### 19.7 Acceptance of Terms

Commencing or authorising the service constitutes the client's full and irrevocable acceptance of this disclaimer and acknowledgment of the inherent risks associated with industrial chemical cleaning. These terms govern all services provided by the service provider, regardless of scope or location, and remain in effect unless expressly modified by a written agreement signed by both parties.

## 20. Consumer Guarantees Act 1993

20.1 If the Customer is acquiring Goods 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 Goods by Utrex to the Customer.

## 21. Intellectual Property and Confidentiality

21.1 For the purposes of this contract "Intellectual Property" shall mean the following and all rights to such "Intellectual Property" shall remain the property of Utrex:

- (a) patents, copyrights and design rights;
- (b) trade secrets and technical know-how;
- (c) technical design documents or methods;
- (d) any reports produced and subsequent recommendations;
- (e) ideas, concepts, inventions;
- (f) emails and meeting records;
- (g) formulas, production processes, methods of manufacture or treatment; and
- (h) other written materials howsoever, recorded and stored, whether manually, mechanically, electronically;
- (i) electromagnetically or optically in relation to the matters referred to above (a) to (i) inclusive.

21.2 The Customer and/or the Customer's agent acting on behalf the Customer or the Customer's employees agree not to use, copy or distribute to any third party, in full or part, any reports, methods or processes used in the course of the Services by Utrex.

21.3 The quotation and the information contained in the quotation provided by Utrex to the Customer is done so on a "commercial in confidence" basis thereby, each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.

21.4 The Customer agrees that Utrex may (at no cost) use for the purposes of marketing or entry into any competition, any incidental items which Utrex has created for the Customer.

## 22. Default and Consequences of Default

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

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

22.3 Further to any other rights or remedies Utrex may have under this Contract, if a Customer has made payment to Utrex, 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

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Utrex under this clause 22 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.

- 22.4 Without prejudice to Utrex's other remedies at law Utrex shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Utrex shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Utrex becomes overdue, or in Utrex'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 Utrex;
  - (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.

### 23. Cancellation

- 23.1 Without prejudice to any other remedies Utrex may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Utrex may suspend or terminate the supply of Goods or Services to the Customer. Utrex will not be liable to the Customer for any loss or damage the Customer suffers because Utrex has exercised its rights under this clause.
- 23.2 Utrex may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods or Services at any time before the Goods are delivered or Services are rendered by giving written notice to the Customer. On giving such notice Utrex shall repay to the Customer any money paid by the Customer for the Goods or Services. Utrex shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Customer cancels Delivery of Goods or Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Utrex as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 24. Privacy Policy

- 24.1 All emails, documents, images or other recorded information held or used by Utrex is Personal Information as defined and referred to in clause 24.3 and therefore considered confidential. Utrex acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A 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"). Utrex acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Utrex that may result in serious harm to the Customer, Utrex 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.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to Utrex in respect of Cookies where the Customer utilises Utrex's website to make enquiries. Utrex 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 Utrex when Utrex sends an email to the Customer, so Utrex may collect and review that information ("collectively Personal Information")
- If the Customer consents to Utrex's use of Cookies on Utrex's website and later wishes to withdraw that consent, the Customer may manage and control Utrex's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 24.3 The Customer authorises Utrex or Utrex'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 Utrex from the Customer directly or obtained by Utrex 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.
- 24.4 Where the Customer is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.5 The Customer shall have the right to request (by e-mail) from Utrex, a copy of the Personal Information about the Customer retained by Utrex and the right to request that Utrex correct any incorrect Personal Information.
- 24.6 Utrex 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.
- 24.7 The Customer can make a privacy complaint by contacting Utrex via e-mail. Utrex 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>.

### 25. Equipment Hire

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- 25.1 Equipment shall at all times remain the property of Utex and is returnable on demand by Utex. In the event that Equipment is not returned to Utex in the condition in which it was delivered Utex retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all Utex shall have right to charge the Customer the full cost of replacing the Equipment.
- 25.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Utex to the Customer.
- 25.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, Utex's interest in the Equipment and agrees to indemnify Utex against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 25.4 Notwithstanding the above clause, immediately on request by Utex the Customer will pay:
- (a) any lost hire charges Utex would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - (b) any insurance excess payable in relation to a claim made by either the Customer or Utex in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or Utex's.
- 25.5 Return of the Equipment ("**Return**") will be completed when the:
- (a) Equipment is returned by the Customer to Utex's place of business; or
  - (b) Utrex takes back possession of the Equipment once collection by Utex is affected.

### 26. Service of Notices

- 26.1 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.
- 26.2 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.

### 27. Trusts

- 27.1 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 Utrex may have notice of the Trust, the Customer covenants with Utrex 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 Utrex (Utrex 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.

### 28. General

- 28.1 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.
- 28.2 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 courts of Tauranga, New Zealand.
- 28.3 Except to the extent permitted by law "**CGA**", Utrex 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 Utrex of these terms and conditions (alternatively Utrex's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 28.4 Utrex may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 28.5 The Customer cannot licence or assign without the written approval of Utrex.
- 28.6 Utrex 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 Utrex's sub-contractors without the authority of Utrex.
- 28.7 The Customer agrees that Utrex 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 Utrex to provide Goods to the Customer.

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- 28.8 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.
- 28.9 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.