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## Crime Scene Cleaners 2010 Limited – Terms & Conditions of

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### 1. Definitions

- 1.1 "Agent" means Crime Scene Cleaners 2010 Limited, its successors and assigns or any person acting on behalf of and with the authority of Crime Scene Cleaners 2010 Limited.
- 1.2 "Client" means the person/s buying the Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Services" means all Services or Services supplied by the Agent to the Client at the Client's request from time to time (where the context so permits the terms 'Services' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any Services and Services Tax (GST) where applicable) for the Services as agreed between the Agent 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 Services.
- 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 Agent.
- 2.3 The Agent may at its discretion use or recommend contractors and/or tradesmen to complete the Services. The Agent takes care to ensure that these contractors and/or tradesmen are competent, trained and independently insured. Should the Client need to make any claim in regards to damage, loss, the performance or conduct of such a contractor and/or tradesmen then the Client agrees to make such claim direct to the contractor or tradesmen in the first instance and shall only involve the Agent in such a claim if the Client is unable to resolve the issue with the contractor or tradesmen.

### 3. Electronic Transactions Act 2002

- 3.1 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.

### 4. Change in Control

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

### 5. Price and Payment

- 5.1 At the Agent's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Agent to the Client; or
  - (b) the Agent'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. Additional charges may apply where job is staggered over more than one visit to site.
- 5.2 The Agent reserves the right to change the Price:
- (a) if a variation to the Services which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, additional worksite visits required, availability of machinery, safety considerations, prerequisite work by a third party not being completed, etc.) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to the Agent in the cost of labour or Services which are beyond the Agent's control.
- 5.3 Variations will be charged for on the basis of the Agent's quotation, and will be detailed in writing, and shown as variations on the Agent's invoice. The Client shall be required to respond to any variation submitted by the Agent within ten (10) working days. Failure to do so will entitle the Agent 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 Agent's sole discretion, a deposit may be required.
- 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Agent, which may be:
- (a) on delivery of the Services;
  - (b) by way of instalments/progress payments in accordance with the Agent's payment schedule;
  - (c) 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; Application for Credit must be applied for in this instance.
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Agent.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Agent.
- 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 Agent 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 Agent an amount equal to any GST the Agent must pay for any supply by the Agent under this or any other contract for the sale of the Services. 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 Services
- 6.1 Delivery ("Delivery") of the Services is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Services at the Agent's address; or
  - (b) the Agent (or the Agent's nominated carrier) delivers the Services at the Client's nominated address even if the Client is not present at the address.

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- 6.2 The Agent may deliver the Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.3 Any time specified by the Agent for delivery of the Services is an estimate only and the Agent 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 Services to be delivered at the time and place as was arranged between both parties. In the event that the Agent is unable to supply the Services as agreed solely due to any action or inaction of the Client, then the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage. Such charges may include, but not be limited to, standing time experience by the Agent due to
- (a) the site not being ready for the services to occur;

### **7. Access**

- 7.1 The Client shall ensure that the Agent has clear and free access to the worksite at all times to enable them to undertake the Services. The Agent 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 Agent.
- 7.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks or unloading equipment as may be deemed necessary by the Agent.

### **8. Underground Locations and Hidden Mains/Services**

- 8.1 Prior to the Agent commencing any work the Client must advise the Agent of the precise location of all underground/hidden mains/services on the site and clearly mark the same (including, but not limited to, any mains/services in wall cavities). The mains/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 site.
- 8.2 Whilst the Agent will take all care to avoid damage to any services the Client agrees to indemnify the Agent 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 clause 8.1.

### **9. Compliance with Laws**

- 9.1 The Client and the Agent 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.
- 9.2 The Client shall obtain (at the expense of the Client) all licenses, resource consents and approvals that may be required for the Services.
- 9.3 The Client agrees that the worksite will comply with any WorkSafe guidelines and Health and Safety at Work Act 2015 requirements relating to building/construction sites and any other relevant safety standards or legislation.
- 9.4 Where appropriate, the Client shall advise the Agent of the precise location of all known risks present on the site, and where applicable, induct the Agent's workers (including any sub-contractors as required), on:
- (a) any WorkSafe management system;
  - (b) worksite safety expectations;
  - (c) emergency provisions;
  - (d) risks and their control measures; and
  - (e) incident reporting expectations.

### **10. Title**

- 10.1 The Agent and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid the Agent all amounts owing to the Agent; and
  - (b) the Client has met all of its other obligations to the Agent.
- 10.2 Receipt by the Agent 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.
- 10.3 It is further agreed that until ownership of the Services passes to the Client in accordance with clause 10.1:
- (a) the Client is only a bailee of the Services and must return the Services to the Agent on request.
  - (b) the Client holds the benefit of the Client's insurance of the Services on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Services being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Services other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Services then the Client must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand.
  - (d) the Client should not convert or process the Services or intermix them with other services but if the Client does so then the Client holds the resulting product on trust for the benefit of the Agent and must sell, dispose of or return the resulting product to the Agent as it so directs.
  - (e) the Client irrevocably authorises the Agent to enter any premises where the Agent believes the Services are kept and recover possession of the Services.
  - (f) the Agent may recover possession of any Services in transit whether or not delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Services nor grant nor otherwise give away any interest in the Services while they remain the property of the Agent.
  - (h) the Agent may commence proceedings to recover the Price of the Services sold notwithstanding that ownership of the Services has not passed to the Client.

### **11. Personal Property Securities Act 1999 ("PPSA")**

- 11.1 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 Services and/or collateral (account) – being a monetary obligation of the Client to the Agent for Services – that have previously been supplied and that will be supplied in the future by the Agent to the Client.
- 11.2 The Client undertakes to:

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- (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 Agent 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 Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Services charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services and/or collateral (account) in favour of a third party without the prior written consent of the Agent; and
  - (d) immediately advise the Agent of any material change in its business practices of selling the Services which would result in a change in the nature of proceeds derived from such sales.
- 11.3 The Agent and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Agent, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by the Agent under clauses 11.1 to 11.5.

### **12. Security and Charge**

- 12.1 In consideration of the Agent agreeing to supply the Services, 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).
- 12.2 The Client indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 12.3 The Client irrevocably appoints the Agent and each director of the Agent as the Client'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 Client's behalf.

### **13. Client's Disclaimer**

- 13.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Agent and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

### **14. Issues**

- 14.1 The Client shall inspect the Services on delivery and shall within forty-eight (48) hours of delivery (time being of the essence) notify the Agent of any alleged problem, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to rectifying the issue.

### **15. Consumer Guarantees Act 1993**

- 15.1 If the Client is acquiring Services 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 Services by the Agent to the Client.

### **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 Agent'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 Agent any money the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Agent may have under this contract, if a Client has made payment to the Agent, 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 Agent 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 Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by the Agent;
  - (c) 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
  - (d) 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 Agent 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 Agent may suspend or terminate the supply of Services to the Client. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
- 17.2 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any money paid by the Client for the Services. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).

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### 18. Privacy

- 18.1 The Client authorises the Agent or the Agent's agent to collect, retain, use, and dispose of any information about the Client, subject to;
- (a) the provisions of the Privacy Act 2020 (including any relevant amendments, additions, or associated regulations); and
  - (b) the Agent's Privacy Policy.

### 19. Dispute Resolution

- 19.1 All disputes and differences between the Client and the Agent touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

### 20. Construction Contracts Act 2002

- 20.1 The Client hereby expressly acknowledges that:

- (a) the Agent 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:
  - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
  - (ii) 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
  - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Agent by a particular date; and
  - (iv) the Agent has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Agent suspends work, it:
  - (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 Agent 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 Agent 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 Agent 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. General

- 22.1 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.
- 22.2 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 Christchurch, New Zealand.
- 22.3 The Agent 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 Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 22.4 The Client may not assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld).
- 22.5 The Agent 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 Agent's sub-contractors without the authority of the Agent.
- 22.6 The Client agrees that the Agent 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 Agent to provide Services to the Client.

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- 22.7 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.
- 22.8 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.