

1. Definitions

- 1.1 **"Agent"** means Archant Limited, its successors and assigns.
- 1.2 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Agent to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 **"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.
- 1.4 **"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 Client does not wish to allow Cookies to operate in the background when using the Agent's website, then the Client 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.
 - (a)
- 1.5 **"Goods"** means all Goods 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 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 **"Intended Use"** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Services.
- 1.7 **"Non-Conforming Building Product"** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
 - (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Agent and the Client in accordance with clause 8 below.
- 1.9 **"Worksite"** means the address nominated by the Client to which the Goods or Services are to be supplied by the Agent.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 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 Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Agent 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 Client's credit limit and/or the account exceeds the payment terms, the Agent reserves the right to refuse delivery.
- 2.6 None of the Agent's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Agent in writing nor is the Agent bound by any such unauthorised statements.
- 2.7 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Agent reserves the right to vary the Price with alternative Goods as per clause 8.2, subject to prior confirmation and agreement of both parties. The Agent also reserves the right to halt all Services until such time as the Agent and the Client agree to such changes. The Agent shall not be liable to the Client for any loss or damage the Client suffers due to the Agent exercising its rights under this clause.
- 2.8 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services the Agent is to supply. The Agent will not accept liability to the Client for quality of Goods which comply with accepted industry standards.
- 2.9 Any advice, recommendation, information, assistance or service provided by the Agent in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Agent's own knowledge and experience and shall be accepted without liability on the part of the Agent. Where such advice or recommendations are not acted upon then the Agent shall require the Client or their agent to authorise commencement of the Services in writing. The Agent shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.10 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 Client agrees that should the Client introduce any third party to the Agent as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Agent in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise the Agent in writing of the parameters of the limited authority granted to their representative.

- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Agent for all additional costs incurred by the Agent (including the Agent's profit margin) in providing any Goods, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1 The Client acknowledges and accepts that the Agent shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Agent in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Agent 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 the Agent; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Change in Control**
- 5.1 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 and contact phone or fax number/s, change of trustees 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.
- 6. On-Line Ordering**
- 6.1 The Client acknowledges and agrees that:
- (a) the Agent does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Agent
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such the Agent cannot warrant against delays or errors in transmitting data between the Client and the Agent including orders, and you agree that to the maximum extent permitted by law, the Agent will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Client's information cannot be read by or altered by outside influences;
 - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, the Agent shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 6.2 The Agent reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Agent's business, or violated these terms and conditions.
- 7. Credit Card Information**
- 7.1 The Agent will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Agent;
 - (b) not disclose the Client's credit card details to any third party;
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Policy (clause 25) or where required by law.
- 7.2 The Client expressly agrees that, if pursuant to this Contract, there are:
- (a) any unpaid charges;
 - (b) other amounts due and outstanding by the Client;
 - (c) any equipment (or any part of them) supplied on loan that are lost or damaged.
- 7.3 The Agent is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.
- 8. Price and Payment**
- 8.1 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 Price as at the date of Delivery of the Goods according to the Agent's current Price list; or
 - (c) the Agent's quoted Price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2 The Agent 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) if during the course of the Services, the Goods are not or cease to be available from the Agent's third-party supplier's, then the Agent reserves the right to provide alternative Goods; or
 - (d) 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 Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, change of design, safety considerations, prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hidden pipes and wiring, etc.) which are only discovered on commencement of the Services; or

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- (e) in the event of increases to the Agent 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 the Agent's control.
- 8.3 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.
- 8.4 At the Agent's sole discretion, a non-refundable fifty percent (50%) deposit may be required.
- 8.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Agent, 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 the Agent's payment schedule, which may be:
 - (i) fifty percent (50%) deposit, due upon acceptance of the quote;
 - (ii) the remaining balance due on delivery of the Goods; and/ or
 - (iii) such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the Worksite but not yet installed.
 - (d) 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;
 - (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 Client by the Agent.
- 8.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be use other than to remedy defects in the performance of the Agent's obligations under the Contract.
- 8.7 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Agent.
- 8.8 The Agent may in its discretion allocate any payment received from the Client towards any invoice that the Agent determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Agent may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Agent, payment will be deemed to be allocated in such manner as preserves the maximum value of the Agent's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 8.9 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, unless the request for payment by the Agent is a claim made under the Construction Contracts Act 2002. Nothing in this clause 8.9 prevents the Client from the ability to dispute any invoice.
- 8.10 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 Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

9. Provision of the Services

- 9.1 Subject to clause 9.2 it is the Agent's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 9.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Agent claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Agent's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Services; or
 - (c) notify the Agent that the Worksite is ready.
- 9.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that the Agent (or the Agent's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 9.4 At the Agent's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
- 9.5 The Agent 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.
- 9.6 Any time specified by the Agent for Delivery of the Goods 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 Goods 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 Goods 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.

10. Display Stands Provided on Loan

- 10.1 Display stand/s and associated equipment ("**Display Stand**") shall at all times remain the property of the Agent.
- 10.2 The Agent agrees that they shall be responsible for Delivery of the Display Stand to the Client.
- 10.3 The Client agrees that;
- (a) the Display Stand is only to be used to display the Agent's Goods or any of the Agent's associated companies; and
 - (b) the Display Stand is to be kept stocked to the agreed minimum levels at all times; and
 - (c) keep the Display Stand in their own possession and control and shall not assign the benefit of the Display Stand nor be entitled to a lien over the Display Stand; and

- (d) not alter or make any additions to the Display Stand including but without limitation altering, making any additions to, defacing or erasing any identifying mark, plate or number on or in the Display Stand or in any other manner interfere with the Display Stand; and
 - (e) the Client is responsible for the upkeep of the stand and agrees to take all due care to ensure that the Display Stand is not damaged or marked in any way; and
 - (f) they shall immediately advise the Agent if for any reason they opt to remove the Display Stand from display.
- 10.4 The Agent reserves the right to require the immediate return of the stand in the event that the conditions in clause 10.3 are not met.
- 10.5 The Client may opt to return the stand to the Agent at any time, but may not throw it away, or give it to any other party, unless with the express permission of the Agent.
- 10.6 If the stand is damaged or lost whilst in the care of the Client then the Client shall be liable for the full cost of the repair or replacement of the stand (notwithstanding that such costs shall not exceed the value of the stand as stated in the Agent's Display Stand agreement).
- 10.7 The Client accepts full responsibility for the safekeeping of the Display Stand and the Client agrees to insure, or self-insure, the Agent's interest in the Display Stand and agrees to indemnify the Agent 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 Display Stand. Further the Client will not use the Display Stand nor permit it to be used in such a manner as would permit an insurer to decline any claim.

11. Risk

- 11.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 11.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 11.3 If the Client requests the Agent to leave Goods outside the Agent's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 11.4 The Agent shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Agent accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 11.5 The Client acknowledges that:
- (a) Goods or engineered products supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface, and finish, and may fade or change colour over time. The Agent will make every effort to match batches/samples of the Goods supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
 - (b) variations of colour and shade are inherent in the Goods. While every effort will be taken by the Agent to match colour and shade of the Goods, the Agent shall not be liable for any loss, damage or costs, howsoever arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied;
 - (c) Goods supplied may:
 - (i) expand, contract, or distort as a result of exposure to heat, cold, weather; and
 - (ii) mark or stain if exposed to certain substances; and
 - (iii) be damaged or disfigured by impact or scratching.

12. Worksite Access and Condition

- 12.1 The Agent is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by the Agent will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 12.2 It is the intention of the Agent and agreed by the Client that:
- (a) 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 (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). The Agent shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Agent; and
 - (b) it is the Client's responsibility to provide the Agent, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 12.3 The Client agrees to be present at the Worksite when and as reasonably requested by the Agent and its employees, contractors and/or agents.
- 12.4 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of the Agent to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Agent's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the Agent is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out the Agent's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Services will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Agent.

13. Service Locations

- 13.1 Prior to the Agent commencing any work the Client must advise the Agent of the precise location of all services on the Worksite and clearly mark the same. The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 13.2 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 13.1.

14. Compliance with Laws

- 14.1 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, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 14.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 14.3 Where the Client has supplied products for the Agent to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Agent's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then the Agent shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 8.2.
- 14.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 14.5 Notwithstanding clause 14.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Agent agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

15. Title

- 15.1 The Agent and the Client agree that ownership of the Goods 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.
- 15.2 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.
- 15.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 15.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Agent on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the 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 Goods are kept and recover possession of the Goods;
 - (f) the Agent may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Agent; and
 - (h) the Agent may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

16. Personal Property Securities Act 1999 ("PPSA")

- 16.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by the Agent to the Client, and the proceeds from such Goods as listed by the Agent to the Client in invoices rendered from time to time.
- 16.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the 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 Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods 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 Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.3 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.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 16.5 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.
- 16.6 The Client shall unconditionally ratify any actions taken by the Agent under clauses 16.1 to 16.5.
- 16.7 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of the Agent agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 17.2 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.
- 17.3 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 17 including, but not limited to, signing any document on the Client's behalf.

18. Defects and Returns

- 18.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods.
- 18.2 Goods will not be accepted for return other than in accordance with 18.1 above, and provided that:
- (a) the Agent has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and
 - (c) the Agent 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.
- 18.3 The Agent will not accept the return of Goods for credit.
- 18.4 The Agent 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.
- 18.5 Subject to clause 18.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

19. Warranty

- 19.1 Subject to the conditions of warranty set out in clause 19.2 the Agent warrants that if any defect in any workmanship provided by the Agent becomes apparent and is reported to the Agent within five (5) years of the date of Delivery (time being of the essence) then the Agent will either (at the Agent's sole discretion) replace or remedy the defect.
- 19.2 The conditions applicable to the warranty given by clause 19.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods or serviced item; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Agent; or
 - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Agent shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without the Agent's consent.
 - (c) in respect of all claims the Agent shall not be liable to compensate the Client for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Client's claim.
- 19.3 For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent 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.

20. Consumer Guarantees Act 1993

- 20.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Agent to the Client.

21. Intellectual Property

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

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 the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 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).
- 22.3 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 22 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.
- 22.4 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.

23. Cancellation

- 23.1 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 Goods 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.
- 23.2 The Agent may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any money paid by the Client for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Agent 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 Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

24. Dispute Resolution

- 24.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be 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.

25. Privacy Policy

- 25.1 All emails, documents, images or other recorded information held or used by the Agent is "**Personal Information**" as defined and referred to in clause 25.3 and therefore considered confidential. The Agent 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 as set out in the Act. The Agent acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Agent that may result in serious harm to the Client, the Agent will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to the Agent in respect of Cookies where the Client utilises the Agent's website to make enquiries. The Agent 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 Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Agent when the Agent sends an email to the Client, so the Agent may collect and review that information ("collectively Personal Information")
- If the Client consents to the Agent's use of Cookies on the Agent's website and later wishes to withdraw that consent, the Client may manage and control the Agent's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 25.3 The Client authorises the Agent or the Agent's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (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 Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.

- (b) disclose information about the Client, whether collected by the Agent from the Client directly or obtained by the Agent from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 25.4 Where the Client is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 25.5 The Client shall have the right to request (by e-mail) from the Agent, a copy of the Personal Information about the Client retained by the Agent and the right to request that the Agent correct any incorrect Personal Information.
- 25.6 The Agent will destroy Personal Information upon the Client'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.
- 25.7 The Client can make a privacy complaint by contacting the Agent via e-mail. The Agent 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

26. Suspension of Services

- 26.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, 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 in accordance with clause 8.5 and/or any subsequent amendments or new legislation 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 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 Contract and Commercial Law Act 2017; 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;
- (d) due to any act or omission by the Client, the Client effectively precludes the Agent from continuing the Services or performing or complying with the Agent's obligations under this Contract, then without prejudice to the Agent's other rights and remedies, the Agent may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Agent as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 26.2 If pursuant to any right conferred by this Contract, the Agent suspends the Services and the default that led to that suspension continues unremedied subject to clause 23.1 for at least ten (10) working days, the Agent shall be entitled to terminate the Contract, in accordance with clause 23.

27. Service of Notices

- 27.1 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.
- 27.2 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.

28. Trusts

- 28.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Agent may have notice of the Trust, the Client covenants with the Agent as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of the Agent (the Agent will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

29. General

- 29.1 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.
- 29.2 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 Hastings, New Zealand.
- 29.3 Subject to the CGA, 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 Goods).
- 29.4 The Agent may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 29.5 The Client cannot licence or assign without the written approval of the Agent.
- 29.6 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.
- 29.7 The Client agrees that the Agent may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to 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 Goods to the Client.
- 29.8 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. This clause does not apply to a failure by the Client to make a payment to the Agent.
- 29.9 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.