

Isaac's Plumbing, Pumping & Electrical – Terms & Conditions of Trade

1. **Definitions**
- 1.1 **Client** means the persons, entities or any person acting on behalf of and with the authority of the Client requesting the Service Provider to provide the Works 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.
- 1.2 **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.
- 1.3 **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 Service Provider'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.**
- 1.4 **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 Works.
- 1.5 **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.
- 1.6 **Price** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between the Service Provider and the Client in accordance with clause 5 below.
- 1.7 **Service Provider** means East Coast Electrical 2013 Limited T/A Isaac's Plumbing, Pumping & Electrical, its successors and assigns.
- 1.8 **Works** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Service Provider to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.9 **Worksite** means the address nominated by the Client to which the Materials are to be supplied by the Service Provider.
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 any Works.
- 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 and accepts that:
 - (a) the supply of Works on credit shall not take effect until the Client has completed a credit application with the Service Provider and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Service Provider reserves the right to refuse delivery; and
 - (c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Service Provider reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 5.2. In all such cases the Service Provider will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as the Service Provider and the Client agree to such changes.
- 2.5 Where the Service Provider gives any advice, recommendation, information, assistance or service provided by the Service Provider in relation to Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on the Service Provider's own knowledge and experience and shall be accepted without liability on the part of the Service Provider. Where such advice or recommendations are not acted upon then the Service Provider shall require the Client or their agent to authorise commencement of the Works in writing. The Service Provider shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.6 Unless otherwise agreed, in the event that the Service Provider is required to provide the Works urgently, that may require the Service Provider's staff to work outside normal business hours, then the Service Provider reserves the right to charge the Client:
 - (a) an additional two hour **Call Out fee** plus time and a half where the Works are carried out after hours; and
 - (b) time and a half for any Statutory days.
- 2.7 These terms and conditions may be meant to be read in conjunction with the Service Provider's Hire Form and where the context so permits, the terms 'Works' or 'Materials' shall include any supply of Equipment, as defined therein.
- 2.8 If the Service Provider has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that the Service Provider shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Service Provider in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Service Provider in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Service Provider, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Client shall give the Service Provider not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number(s), change of trustees, or business practice). The Client shall be liable for any loss incurred by the Service Provider as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At the Service Provider's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Service Provider to the Client in respect of Works performed or Materials supplied; or
 - (b) the Service Provider's Price at the date of delivery of the Works according to the Service Provider's current price list; or
 - (c) the Service Provider's quoted Price (subject to clause 5.2) which shall be binding upon the Service Provider provided that the Client shall accept the Service Provider's quotation in writing within thirty (30) days.
- 5.2 The Service Provider reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works 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, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, contaminated soil, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Service Provider in the cost of labour or materials which are beyond the Service Provider's control.
- 5.3 Variations will be charged for on the basis of the Service Provider's quotation, and will be detailed in writing, and shown as variations on the Service Provider's invoice. The Client shall be required to respond to any variation submitted by the Service Provider within ten (10) working days. Failure to do so will entitle the Service Provider to amend the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Service Provider's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Service Provider, which may be:
 - (a) on completion of the Works;
 - (b) by way of progress payments in accordance with the Service Provider's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed;
 - (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;
 - (d) 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 Service Provider.
- 5.6 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 Works during which time all Works 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 used other than to remedy defects in the performance of the Service Provider's obligations under the Contract.
- 5.7 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Service Provider.
- 5.8 The Service Provider may in its discretion allocate any payment received from the Client towards any invoice that the Service Provider determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Service Provider may re-allocate any payments previously received and allocated. In the absence of an agreement allocation by the Service Provider, payment will be deemed to be allocated in such manner as preserves the maximum value of the Service Provider's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 5.9 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 Service Provider nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Service Provider is a claim made under the Construction Contracts Act 2002. Nothing in this clause 5.9 prevents the Client from the ability to dispute any invoice.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Service Provider an amount equal to any GST the Service Provider must pay for any supply by the Service Provider under this or any other agreement for the sale of the Materials. 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. **Provision of the Works**
- 6.1 Subject to clause 6.2 it is the Service Provider's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Service Provider claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Service Provider'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 Works; or
 - (c) notify the Service Provider that the Worksite is ready.
- 6.3 At the Service Provider's sole discretion, the cost of delivery is in addition to the Price.
- 6.4 The Service Provider may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by the Service Provider for delivery of the Works is an estimate only and the Service Provider 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 Works to be supplied at the time and place as so arranged between both parties. In the event that the Service Provider is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Service Provider shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
7. **Risk**
- 7.1 If the Service Provider retains ownership of the Materials under clause 12 then:
 - (a) where the Service Provider is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client's nominated carrier takes possession of the Materials at the Service Provider's address; or
 - (ii) the Materials are delivered by the Service Provider or the Service Provider's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where the Service Provider is to both supply and install Materials then the Service Provider shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests the Service Provider to leave Materials outside the Service Provider's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 The Service Provider shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Service Provider accepts no responsibility for any loss, damage or costs however resulting from these inaccurate plans, specifications or other information.
- 7.4 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Service Provider immediately upon any proposed changes. The Client agrees to indemnify the Service Provider against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.
- 7.5 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) the Service Provider reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then the Service Provider shall be entitled to delay installation of the Materials (in accordance with clause 6.2) until the Service Provider is satisfied that it is safe for the installation to proceed. The Service Provider may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 7.6 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Service Provider against any costs incurred by the Service Provider as a consequence of such discovery. Under no circumstances will the Service Provider handle removal of asbestos product.
- 7.7 The Client accepts that where contaminated or unsuitable soil requires to be replaced by sand as part of the provision of the Works, then this cost shall be shown on the invoice.
- 7.8 The Service Provider shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against the Service Provider's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to the Service Provider. Accordingly, the Service Provider offers no warranty in regards to the aforementioned.
- 7.9 The Client acknowledges and accepts that:
 - (a) choked drains generally indicate pipelines are not fully efficient (i.e. breakage, block, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, the Service Provider cannot give any guarantee against recurrence or further damage. In the event that the Client requests the Service Provider to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and the Service Provider does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the Service Provider may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or removal of said equipment;
 - (b) the Service Provider is only responsible for Materials that are replaced/supplied by the Service Provider, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify the Service Provider against any loss or damage to the Works, or caused by the goods, or any part thereof howsoever arising;
 - (c) where the Service Provider has performed temporary repairs that are:
 - (i) Service Provider offers no guarantee against the recurrence of the initial fault, or any further damage caused; and
 - (ii) Service Provider will immediately advise the Client of the fault and shall liaise with the Client with an estimate for the full repair;
 - (d) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Service Provider's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and
 - (e) Materials supplied may:
 - (i) fade or change colour over time;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
- 7.10 The Service Provider accepts no responsibility for any damage or performance related problems with any Material where they have not been used and/or maintained in accordance with the Service Provider's and/or the manufacturers' recommendations.
8. **Worksite Access and Condition**
- 8.1 It is the intention of the Service Provider and agreed by the Client that:
 - (a) the Client shall ensure that the Service Provider has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and delivery and installation of the Materials). The Service Provider 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 Service Provider; and
 - (b) it is the Client's responsibility to provide the Service Provider, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 8.2 The Client agrees to be present at the Worksite when and as reasonably requested by the Service Provider and its employees, contractors and/or agents.
- 8.3 Where the Service Provider requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply the Service Provider a safe for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 8.4 **Worksite Inductions**
 - (a) in the event the Client requires an employee or sub-contractor of the Service Provider 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 Service Provider's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the Service Provider is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out the Service Provider's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works 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 Service Provider.
9. **Underground Locations**
- 9.1 Prior to the Service Provider commencing any work the Client must advise the Service Provider of the precise location of all underground services on the Worksite and clearly mark the same. The underground 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.
- 9.2 Whilst the Service Provider will take all care to avoid damage to any underground services the Client agrees to indemnify the Service Provider 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 9.1.
10. **Insurance**
- 10.1 The Service Provider shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure that they are similarly insured.
11. **Compliance with Laws**
- 11.1 The Client and the Service Provider shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating to any other relevant safety standards or legislation pertaining to the Works.
- 11.2 Both parties acknowledge and agree:
 - (a) to comply with the Building Act 2004 (including any subsequent Amendments) in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.3 Where the Client has supplied products for the Service Provider to complete the Works, 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, in the service Provider's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then the Service Provider shall be entitled, without prejudice, to halt the Works 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 5.2.
- 11.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 11.5 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Service Provider, then Service Provider shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.
- 11.6 Any live works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Service Provider's live works procedures are designed to eliminate risk of injury to the Service Provider's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 5.2.
- 11.7 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Service Provider 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.
12. **Title**
- 12.1 The Service Provider and the Client agree that ownership of the Materials shall not pass until:
 - (a) the Client has paid the Service Provider all amounts owing to the Service Provider; and
 - (b) the Client has met all of its other obligations to the Service Provider.

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- 12.2 Receipt by the Service Provider 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.
- 12.3 It is further agreed that:
- until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Service Provider on request;
 - the Client holds the benefit of the Client's insurance of the Materials on trust for the Service Provider and must pay to the Service Provider the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - the production of these terms and conditions by the Service Provider shall be sufficient evidence of the Service Provider's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Service Provider to make further enquiries;
 - the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Service Provider and must pay or deliver the proceeds to the Service Provider on demand;
 - the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Service Provider and must sell, dispose of or return the resulting product to the Service Provider as it so directs;
 - unless the Materials have become fixtures the Client irrevocably authorises the Service Provider to enter any premises where the Service Provider believes the Materials are kept and recover possession of the Materials;
 - the Service Provider may recover possession of any Materials in transit whether or not delivery has occurred;
 - the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Service Provider; and
 - the Service Provider may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
13. **Personal Property Securities Act 1999 ("PPSA")**
- 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by the Service Provider to the Client and the proceeds from such Materials.
- 13.2 The Client undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Service Provider may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, the Service Provider for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of the Service Provider; and
 - immediately advise the Service Provider of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Service Provider and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Service Provider, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by the Service Provider under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
14. **Security and Charge**
- 14.1 In consideration of the Service Provider agreeing to supply the Works, 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.
- 14.2 The Client indemnifies the Service Provider from and against all the Service Provider's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Service Provider's rights under this clause.
- 14.3 The Client irrevocably appoints the Service Provider and each director of the Service Provider as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
15. **Defects and Returns**
- 15.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Service Provider of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Service Provider an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Service Provider has agreed in writing that the Client is entitled to reject, the Service Provider's liability is limited to either (at the Service Provider's discretion) replacing the Materials or repairing the Materials.
- 15.2 Returns will only be accepted provided that:
- the Client has complied with the provisions of clause 15.1; and
 - the Service Provider has agreed in writing to accept the return of the Materials; and
 - the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
 - the Service Provider will not be liable for Materials which have not been stored or used in a proper manner; and
 - the Materials 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.
- 15.3 The Service Provider may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.
- 15.4 Returned Materials may (at the Service Provider's sole discretion), incur restocking and handling fees.
- 15.5 Subject to clause 15.1, non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.
16. **Warranties**
- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Service Provider warrants that if any defect in any Materials manufactured or Works provided by the Service Provider becomes apparent and is reported to the Service Provider within twelve (12) months of the date of delivery (time being of the essence) then the Service Provider will either (at the Service Provider's sole discretion) replace or remedy the defect.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - failure on the part of the Client to properly maintain any Materials or serviced item; or
 - failure on the part of the Client to follow any instructions or guidelines provided by the Service Provider; or
 - any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or
 - the continued use of any Materials or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - vandal wear and tear, any accident or act of God.
- the warranty shall cease and the Service Provider shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Service Provider's consent.
 - in respect of all claims the Service Provider shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 16.3 For Materials not manufactured by the Service Provider, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Service Provider shall not be bound by or be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
17. **Consumer Guarantees Act 1993**
- 17.1 If the Client is acquiring Materials 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 Materials by the Service Provider to the Client.
18. **Intellectual Property**
- 18.1 Where the Service Provider has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, plans, schedules, drawings and products shall remain vested in the Service Provider, and shall only be used by the Client at the Service Provider's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Service Provider.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Service Provider will not cause the Service Provider to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Service Provider against any action taken by a third party against the Service Provider in respect of any such infringement.
- 18.3 The Client agrees that the Service Provider may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Service Provider has created for the Client.
19. **Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Service Provider's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Service Provider any money the Client shall indemnify the Service Provider from and against all costs and disbursements incurred by the Service Provider in recovering the debt (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, the Service Provider's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Service Provider may have under this Contract, if a Client has made payment to the Service Provider, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Service Provider under this clause 19, 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.
- 19.4 Without prejudice to the Service Provider's other remedies at law the Service Provider shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Service Provider shall, whether or not due for payment, become immediately payable if:
- any money payable to the Service Provider becomes overdue, or in the Service Provider's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by the Service Provider;
 - the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes for assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
20. **Cancellation**
- 20.1 Without prejudice to any other rights or remedies the Service Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice) then the Service Provider may suspend or terminate the supply of the Works. The Service Provider will not be liable to the Client for any loss or damage the Client suffers because the Service Provider has exercised its rights under this clause.
- 20.2 The Service Provider may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Service Provider shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Service Provider for Works already performed. The Service Provider shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Service Provider as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products 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.
21. **Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by the Service Provider is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. The Service Provider acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (the "Act") including Part II of the OECD Guidelines and as set out in the Act. The Service Provider acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Service Provider that may result in serious harm to the Client, the Service Provider 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Service Provider in respect of Cookies which the Client utilises the Service Provider's website to make enquiries. The Service Provider 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:
- IP address, browser, email client type and other similar details;
 - tracking website usage and traffic; and
 - reports are available to the Service Provider when the Service Provider sends an email to the Client, so the Service Provider may collect and review that information ("collectively Personal Information")
- If the Client consents to the Service Provider's use of Cookies on the Service Provider's website and later wishes to withdraw that consent, the Client may manage and control the Service Provider's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client authorises the Service Provider or the Service Provider's agent to:
- access, collect, retain and use any information about the Client:
 - (including, name, address, D.O.B, occupation, driver's licence 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
 - for the purpose of marketing products and services to the Client.
 - disclose information about the Client, whether collected by the Service Provider from the Client directly or obtained by the Service Provider 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.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents of the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from the Service Provider, a copy of the Personal Information about the Client retained by the Service Provider and the right to request that the Service Provider correct any incorrect Personal Information.
- 21.6 The Service Provider 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.
- 21.7 The Client can make a privacy complaint by contacting the Service Provider via e-mail. The Service Provider 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>.
22. **Suspension of Works**
- 22.1 Where the Client is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- the Service Provider has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - the payment is not paid in full by the due date for payment in accordance with clause 5.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Service Provider by a particular date; and
 - the Service Provider has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - if the Service Provider suspends work, it:
 - is not in breach of Contract; and
 - 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
 - is entitled to an extension of time to complete the Contract; and
 - 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.
 - if the Service Provider exercises the right to suspend work, the exercise of that right does not:
 - affect any rights that would otherwise have been available to the Service Provider under the Contract and Commercial Law Act 2017; or
 - enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Service Provider suspending work under this provision;
 - due to any act or omission by the Client, the Client effectively precludes the Service Provider from continuing the Works or performing or complying with the Service Provider's obligations under this Contract, then without prejudice to the Service Provider's other rights and remedies, the Service Provider may suspend the Works 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 Works is based. All costs and expenses incurred by the Service Provider as a result of such suspension and commencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, the Service Provider suspends the Works and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, the Service Provider shall be entitled to terminate the Contract, in accordance with clause 20.
23. **Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this Contract;
 - by sending it by registered post to the address of the other party as stated in this Contract;
 - 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;
 - if sent by email to the other party's last known email address.
- 23.2 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.
24. **Trusts**
- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Service Provider may have notice of the Trust, the Client covenants with the Service Provider as follows:
- the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - 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;
 - the Client will not without consent in writing of the Service Provider (the Service Provider will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - the removal, replacement or retirement of the Client as trustee of the Trust;
 - any alteration to or variation of the terms of the Trust;
 - any advancement or distribution of capital of the Trust; or
 - any resettlement of the trust property.
25. **General**
- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to and settled by mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues (including but not limited to, the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s)).
- 25.2 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 enforce any provision of these terms and conditions. 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.
- 25.3 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 New Zealand.
- 25.4 Subject to the CGA, the Service Provider shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Service Provider of these terms and conditions alternatively the Service Provider's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.5 The Service Provider may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of the Service Provider.
- 25.7 The Service Provider may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Service Provider's sub-contractors without the authority of the Service Provider.
- 25.8 The Client agrees that the Service Provider 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 Service Provider to provide Works to the Client.
- 25.9 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 Service Provider.
- 25.10 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.