

# Arctic Spark Ltd – Terms & Conditions of Trade

<p>1. <b>Definitions</b></p> <p>1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.2 "Contractor" means Arctic Spark Ltd, its successors and assigns or any person acting on behalf of and with the authority of Arctic Spark Ltd.</p> <p>1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor 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).</p> <p>1.5 "Intended Use" means a product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.</p> <p>1.6 "Non-Conforming Product" means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:</p> <p>(a) the product is not, or will not be, safe; or</p> <p>(b) does not, or will not, comply with the relevant regulatory provisions; or</p> <p>(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.</p> <p>1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.</p> <p>1.8 "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. <b>If the Client does not wish to allow Cookies to operate in the background when ordering from the 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 ordering Works via the website.</b></p> <p>1.9 "Prices" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 6 below.</p> <p>2. <b>Acceptance</b></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.</p> <p>2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. <b>Authorised Representatives</b></p> <p>3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Contractor as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client's duly authorised representative).</p> <p>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 Contractor in writing of the parameters of the limited authority granted to their representative.</p> <p>3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Works, Materials or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).</p> <p>4. <b>Errors and Omissions</b></p> <p>4.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.</p> <p>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 willful misconduct of the Contractor, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p>	<p>5. <b>Change in Control</b></p> <p>The Client shall give the Contractor 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 Contractor as a result of the Client's failure to comply with this clause.</p> <p>6. <b>Price and Payment</b></p> <p>At the Contractor's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or</p> <p>(b) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.</p> <p>The Contractor reserves the right to change the Price:</p> <p>(a) if a variation to the Materials which are to be supplied is requested; or</p> <p>(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, safety considerations, prerequisite work by any third party not being completed, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or</p> <p>(d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.</p> <p>Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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.</p> <p>At the Contractor's sole discretion a deposit may be required. 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 Contractor, which may be:</p> <p>(a) on completion of the Works; or</p> <p>(b) by way of progress payments in accordance with the Contractor'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;</p> <p>(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;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.</p> <p>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 section 18(a) to 18(i) of the Construction Contracts Act 2002.</p> <p>Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor (including but not limited to choosing a finance option which is available through the Contractor).</p> <p>The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Materials.</p> <p>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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Contractor is a claim made under the Construction Contracts Act 2002.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor 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.</p> <p>7. <b>Provision of the Works</b></p> <p>Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.</p> <p>The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:</p> <p>(a) make a selection; or</p> <p>(b) have the site ready for the Works; or</p> <p>(c) notify the Contractor that the site is ready.</p> <p>The Contractor 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.</p> <p>In the event that the Contractor is required to provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client a minimum call out fee based on the Contractor's standard hourly labour rate, plus travel, plus Materials, unless otherwise agreed between the Contractor and the Client.</p> <p>Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of</p>	<p>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 was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor 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.</p> <p>8. <b>Risk</b></p> <p>If the Contractor retains ownership of the Materials under clause 14 then:</p> <p>(a) where the Contractor 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 the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); or</p> <p>(b) where the Contractor is to both supply and install Materials then the Contractor 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.</p> <p>Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor'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.</p> <p>The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction site/s. This is the responsibility of the Client or the Client's agent.</p> <p>The Client acknowledges and accepts that:</p> <p>(a) the Contractor is only responsible for parts that are replaced by the Contractor, and in the event that other parts/materials, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and</p> <p>(b) the Contractor is entitled to suspend or terminate the supply of Materials or Works to the Client if there is a material change to the scope of Work as a result of inaccurate plans, specifications or other information; and the Client shall be liable for the Contractor's costs of demobilisation or re-mobilisation of any plant, equipment or staff to or from the site, upon the re-commencement of the Works at the site, if applicable; and</p> <p>(c) they shall not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party; and</p> <p>(d) they shall be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable the Contractor to carry out the Works.</p> <p>The Contractor 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 Contractor's recommendations and/or falls below industry standards, a request detailing that requirement must be made in writing to the Contractor. Accordingly, the Contractor offers no warranty in regards to the aforementioned.</p> <p>The Contractor accepts no responsibility for:</p> <p>(a) any damage or defects in any Materials caused by movement and/or interference of the said Materials; and</p> <p>(b) painting, re-decorating, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.</p> <p>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 Contractor, then the Contractor 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 the responsibility of the Client and will be shown as a variation on the invoice in accordance with clause 6.2.</p> <p>Any live services 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 Contractor's live Works procedures are designed to eliminate risk of injury to the Contractor'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 6.2.</p> <p>The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.</p> <p>10. <b>Installation Risk</b></p> <p>The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.</p> <p>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 Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.</p> <p>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 the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that the Contractor, its employees or suppliers reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may at its sole discretion agree to bring the premises up to a standard</p>	<p>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.</p> <p>The Client acknowledges that in the event that asbestos or any other toxic substances are discovered whilst undertaking any Works, the Contractor shall immediately advise the Client and all relevant authorities of the same, and shall be entitled to suspend the Works pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by the Contractor as a result of the discovery of asbestos/hazardous materials and/or any suspension of Works in relation thereto.</p> <p>10.1 <b>Materials, Documents and Works Supplied by the Client</b></p> <p>The Client:</p> <p>(a) warrants that any documentation supplied for the Works and the content or methods therein are accurate and/or suitable to be used for the purpose for which the document/s were created;</p> <p>(b) agrees that it is reasonable for the Contractor to rely on the documentation;</p> <p>(c) agrees to supply the Contractor with as many copies of the documentation as the Contractor may reasonably need to perform the Works or to obtain any necessary approvals required for the Works.</p> <p>The Client agrees that all materials and works supplied by the Client or the Client's third-party sub-contractors will:</p> <p>(a) be performed or supplied in accordance with all legislative requirements (including, but not limited to and WorkSafe guidelines etc.);</p> <p>(b) be suitable for their inclusion into the Works;</p> <p>(c) be completed to the Contractor's requirements.</p> <p>The Contractor may, where the Contractor believes that any materials or works supplied by the Client or any third party employed by the Client are defective, require that the defective materials be replaced or require such works as are considered defective to be removed, repaired or replaced, the costs of which shall be the Client's responsibility.</p> <p>Notwithstanding clause 10.3 the Contractor shall have no liability whatsoever in terms of the performance of, or suitability of, any materials or works supplied by either the Client or any third party employee of the Client.</p> <p>In the event that the Client undertakes or employs any third party to undertake any works at the site whilst the Contractor is undertaking Works then the Client must ensure that the Client and/or any third party so employed:</p> <p>(a) is appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by the Contractor;</p> <p>(b) does not interfere with the progress of Works by the Contractor;</p> <p>(c) holds all relevant insurances as the Contractor is required to hold or as are otherwise required under this Contract;</p> <p>(d) co-operates with all requests or directives of the Contractor in relation to the timeliness and co-ordination of works to be performed;</p> <p>(e) co-operates as may be reasonably expected with all other persons on the site;</p> <p>(f) discusses any site issues directly with the Contractor and not with any of the Contractor's employees.</p> <p>In the event that the Client or the Client's third party employees do not comply with clauses 10.3 or 10.5 then the Contractor may require the non-compliant party to either leave and/or stay off the site as the Contractor may so direct.</p> <p>10.7 If the Client breaches this clause then the Contractor may (at the Contractor's sole discretion) either:</p> <p>(a) carry on the Works without incorporation of any Client supplied materials or works;</p> <p>(b) suspend the carrying out of the Works as per clause 22.1;</p> <p>(c) terminate this Contract in accordance with clause 22.</p> <p>11. <b>Access</b></p> <p>11.1 The Client shall ensure that the Contractor has clear and free access to the site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Contractor.</p> <p>12. <b>Underground Locations</b></p> <p>12.1 Prior to the Contractor commencing the Works the Client must advise the Contractor of the precise location of all underground services on the site 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 site.</p> <p>12.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 12.1.</p> <p>13. <b>Compliance and Consents</b></p> <p>13.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>13.2 Both parties acknowledge and agree to comply with section 14C (Responsibilities of product manufacturer or supplier) of the Building Amendment Act 2013, in respect of all building products to be supplied during the course of the Works.</p> <p>13.3 Where the Client has supplied products for the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the products supplied will not conform to regulations, then the Contractor 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 6.2.</p> <p>13.4 The Client shall be responsible for:</p> <p>(a) obtaining and paying for any necessary consent, approvals or certificates required for the Works, including those required subsequent to commencement of the Works; and</p> <p>(b) applying for and obtaining the Code Compliance Certificate(s) for the Works.</p> <p>13.5 The Contractor shall:</p> <p>(a) comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works; and</p> <p>(b) provide the Client with all necessary information relating to the Works so that the Client may apply for a Code Compliance Certificate.</p>
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# Arctic Spark Ltd – Terms & Conditions of Trade

<p><b>14. Title</b> 14.1 The Contractor and the Client agree that ownership of the Materials shall not pass until: (a) the Client has paid the Contractor all amounts owing to the Contractor; and (b) the Client has met all of its other obligations to the Contractor. 14.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised. 14.3 It is further agreed that: (a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request; (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed; (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries; (d) 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 Contractor and must pay or deliver the proceeds to the Contractor on demand; (e) 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 Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs; (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials; (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred; (h) the Client shall not charge or grant an encumbrance over the Materials nor grant or otherwise give away any interest in the Materials while they remain the property of the Contractor; (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.</p> <p><b>15. Personal Property Securities Act 1999 ("PPSA")</b> 15.1 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 Materials and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Client. 15.2 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 Contractor may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register; (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Materials charged thereby; (c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and (d) immediately advise the Contractor 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.</p> <p>15.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA. 15.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. 15.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 15.1 to 15.5. 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p><b>16. Security and Charge</b> 16.1 In consideration of the Contractor 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, 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). 16.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause. 16.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.</p> <p><b>17. Defects In Materials</b> 17.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor 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 Contractor has</p>	<p>agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials or repairing the Materials. 17.2 Materials will not be accepted for return other than in accordance with 17.1 above.</p> <p><b>18. Warranties</b> 18.1 Subject to the conditions of warranty set out in clause 18.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at 23.1 the Contractor's sole discretion) replace or remedy the workmanship. 18.2 The conditions applicable to the warranty given by clause 18.1 are: (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) failure on the part of the Client to properly maintain any Materials; or (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or (iv) the continued use of any Materials 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 Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent. (c) in respect of all claims the Contractor 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. 18.3 The warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor 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 Materials. 18.4 The conditions applicable to the warranty given on Materials supplied by the Contractor are contained on the "Warranty Card" that will be supplied with the Materials.</p> <p><b>19. Consumer Guarantees Act 1993</b> 19.1 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 do not apply to the supply of Materials by the Contractor to the Client.</p> <p><b>20. Intellectual Property</b> 20.1 Where the Contractor 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, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor. 20.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement. 20.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.</p> <p><b>21. Default and Consequences of Default</b> 21.1 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. 21.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees). 21.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, 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 Contractor under this clause 21, 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. 21.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if: (a) any money payable to the Contractor becomes overdue, or in the Contractor'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 Contractor; (c) the Client becomes insolvent or bankrupt, 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.</p> <p><b>22. Cancellation</b> 22.1 Without prejudice to any other rights or remedies the Contractor 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(s)) then the Contractor may suspend the Works immediately. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause. 22.2 The Contractor 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 Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works</p>	<p>already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation. 22.3 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 Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits). Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p><b>22.4 Privacy Policy</b> 22.4 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law. 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Contractor in respect of Cookies where transactions for purchases/orders transpire directly from the Contractor's website. The Contractor 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 Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information") In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via the Contractor's website. 23.3 The Client authorises the Contractor or the Contractor'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 Contractor from the Client directly or obtained by the Contractor 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. 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993. 23.5 The Client shall have the right to request the Contractor for a copy of the Personal Information about the Client retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Client held by the Contractor.</p> <p><b>24. Suspension of Works</b> 24.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that: (a) the Contractor 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 6.5 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 Contractor by a particular date; and (iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract. (b) if the Contractor 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 Contractor 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 Contractor 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 Contractor suspending work under this provision; (d) due to any act or omission by the Client, the Client effectively precludes the Contractor from continuing the Works or performing or complying with the Contractor's obligations under this Contract, then without prejudice to the Contractor's other rights and remedies, the Contractor 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 Contractor as a result of such suspension and</p>	<p>recommencement shall be payable by the Client as if they were a variation. 24.2 If pursuant to any right conferred by this Contract, the Contractor suspends the Works and the default that led to that suspension continues unremedied subject to clause 22.1 for at least ten (10) working days, the Contractor shall be entitled to terminate the Contract, in accordance with clause 22.</p> <p><b>25. Service of Notices</b> 25.1 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. 25.2 Any notice that is posted shall be deemed to have been served, unless the contractor is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p><b>26. Trusts</b> 26.1 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 Contractor may have notice of the Trust, the Client covenants with the Contractor as follows: (a) the Contractor 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 Contractor (the Contractor 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.</p> <p><b>General</b> 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s). 27.2 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 subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legally and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. 27.3 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 Porirua, New Zealand. 27.4 The Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works). 27.5 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent. 27.6 The Client cannot licence or assign without the written approval of the Contractor. 27.7 The Contractor 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 Contractor's sub-contractors without the authority of the Contractor. 27.8 The Client agrees that the Contractor 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 Contractor to provide Works to the Client. 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. 27.10 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.</p>
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