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## Vinyl Cladding New Zealand Limited "The Supplier" – Standard Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Supplier" means The Supplier, its successors and assigns or any person acting on behalf of and with the authority of The Supplier.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Goods/Services as specified in any; proposal, quotation, order, verbal or written variation to an order, extra Goods/Services required, invoice, or other documentation, (For clarity: "Authority of the Customer" means any person/s that the Customer introduces to the Supplier as the contact, for receipt of, installation of, in trust or care of, overseeing of, project or site management of, for any amount of Goods/Services to be delivered/supplied) and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Goods/Services" means all traded goods, products, or whether new or second hand, or trade, professional, or labouring, physical, administrative, reporting, inspection, or financial services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods or 'Services' shall be interchangeable for the other and mean the same as Goods/Services).
- 1.4 "Price" means the Price payable (plus any Goods/Services and Services Tax (GST) where applicable) for the Goods/Services as agreed between the Supplier and the Customer in accordance with clause 5 below.
- 1.5 "Free of Charge" means all Goods/Services and services supplied by the Supplier to the Customer where;
- (a) no monetary or consideration of any kind is explicitly and specifically charged for those Goods/Services and/or;
  - (b) any, "No obligation" quantifying and/or costing services and or Goods/Services that are provided to the Customer at any time.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer or the Customers agent places an order for, or accepts delivery of any Goods/Services.
- 2.2 Upon being supplied or, directed to, any of the Supplier's terms and conditions of trade, or special terms, if the Customer does not understand or accept any terms or conditions as written, they acknowledge and accept to contact the Supplier for clarification or seek their own legal advice prior to entering any contract with the Supplier.
- 2.3 The Customer agrees to keep themselves updated with the Suppliers standard terms and conditions of trade that are publically available on their website: [www.vinylcladding.co.nz](http://www.vinylcladding.co.nz) or by direct written request to the Supplier and acknowledges and accepts that these latest terms and conditions of trade as published, shall cover all and any contracts between them and the Supplier, including any existing Contracts not yet fulfilled and finalised.
- 2.4 Once a Customer enters a contract, or any subsequent Contract with the Supplier, the Customer agrees and understands the Supplier will automatically accept that the customer has fully read and agreed to all terms and conditions of trade and any special terms of that Contract or any subsequent Contract.
- 2.5 The Customer upon acceptance of any quotation, estimate, packing slip, invoice, receipt for Goods/Services also accepts they have thoroughly examined the details of such; quotation/estimate, and/or packing slip, and/or invoice, and/or receipt for Goods/Services, and confirm by any payment amount towards such, that all Goods/Services to be supplied by the Supplier are correct and match the requirements of the customer.
- 2.6 Notwithstanding the Supplier's sole right from time to time to update its standard terms and conditions of trade, any specific Customer special terms and conditions may only be amended with the consent of both parties in writing which shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Supplier.
- 2.7 Where the Supplier gives advice, recommendations, information, assistance or service to the Customer or the Customers agent, regarding the Services or Goods/Services then it is given in good faith and the Supplier shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same. In addition, none of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by authorised officer of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.
- 2.8 These terms and conditions may be meant to be read in conjunction with any additional and special terms and conditions of sale, and:
- (a) where the context so permits, the terms 'Goods/Services' or 'Services' shall include any items or items, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 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.
- 2.10 The Customer order and/or acceptance of Goods/Services from the supplier also includes acceptance and consent of supplier site signage to be erected and/or displayed on the customers site for the duration of install works or delivery of the Goods/Services and consent of collection of customer information by the supplier, (for the sole use of the supplier) for marketing, promotional, informational, and/or training purposes that may be used and/or published or publicly displayed which may include but not be limited to photographs, video, reports, and architectural details, and all historical and future customer communications with the supplier, for clarity this acceptance and consent does not allow the supplier to use the information in a purposeful vexatious manner and if the customer at any time believes the supplier is using the information in breach of this clause then they shall be entitled to ask (in writing giving specific cause of concern) for the supplier to cease and desist those particular actions and if the supplier deems the notice to have merit they shall (within 5 working days) cease and desist which will automatically resolve the matter full and final.
- 2.11 The Customer shall not alter, amend, change, deface any written information, product specifications, terms of contract and or quotations or estimations without the express written consent of the supplier. This shall include but not be limited to; supplier site signage, supplier product names, trading brands, non-trading brands, and any architectural details of the Goods/Services of the supplier.
- 2.12 The customers acceptance of any contract with the supplier is on the basis that any amendment or change to that contract which is outside the scope of these terms and conditions shall only be by way of written acceptance between the parties.
- 2.13 The Customer accepts any Goods/Services provided by the supplier that are either explicitly or inexplicitly stated as "free of charge" are at the Customers sole and own full risk. For clarity; this means the Customer shall not have the right to claim any damages and/or any compensation and/or for any Warranty against the supplier in the event of any failure, whatsoever of those Goods/Services given "free of charge" and these

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Goods/Services will include any Goods/Services or actions performed by the supplier to provide the customer with any costing or quantifying information and or other "free of charge" Goods/Services written into any contract.

**3. Errors and Omissions**

3.1 The Customer acknowledges and accepts that the Supplier 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 Supplier 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 Supplier in respect of the Goods/Services and/or;
- (c) where the supplier has assisted in providing any technical information, quantifying, measuring, scaling, pricing or drawing services and/or;
- (d) where the supplier has reasonably concluded from the majority of information provided by the customer, the technical specifications for the Goods/Services to be supplied.

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 wilful misconduct of the Supplier; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Change in Control**

4.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

**5. Price and Payment**

5.1 At the Supplier's sole discretion, the Price shall be either:

- (a) as indicated on invoices provided by the Supplier to the Customer in respect of Goods/Services supplied or Services performed; or
- (b) Subject to acceptance within any specified time frame of any quotation or estimate, the Supplier's quoted Price (subject to clause 5.2) shall be binding upon the parties provided that:
  - (i) the Customer accepts that quoted price;
    - (a) in writing or;
    - (b) verbally or;
    - (c) is confirmed in writing to the Customer by the Supplier.

5.2 The Supplier reserves the right to change the Price:

- (a) if a variation to the Goods/Services which are to be supplied is requested; or
- (b) if a variation to the Goods/Services originally scheduled (including any applicable plans or specifications) is requested; and or
- (c) where additional Goods/Services are required due to the discovery of any short fall of Goods/Services by the Customer or Supplier; and or
- (d) in the event of increases to the Supplier in the cost the Goods/Services to be supplied which are beyond the Supplier's control.

5.3 Where possible Variations will be charged for on the basis of the Supplier's quotation or if a price increase has been affected since the quotation was issued then at the quotation price plus the price rise percentage in effect. It will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within five (5) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of the request for payment on the variation invoice.

5.4 At the Supplier's sole discretion, a non-refundable deposit may be required either as advised by the supplier and/or according to any special terms and conditions of the quotation/estimate and/or as per the terms of the customers approved credit account.

5.5 All deposits paid by the customer, unless explicitly stated otherwise in the contract, are "Non-refundable" and the Supplier is under no obligation whatsoever to cancel the contract and refund any monies to the Customer, however;

- (a) at the sole discretion of the Supplier, the Customer may be allowed to apply to cancel the Contract and seek a refund but only on the grounds of financial hardship and such application must be to and meet the sole satisfaction and acceptance of the Supplier and must prove by any means required by the Supplier that the Customer needs such a refund to avoid financial hardship and;
  - (i) if approved, the Supplier may impose any other requirement needed on the Customer in order to finalise any cancellation and;
  - (ii) The applying Customer agrees the Supplier may choose to cancel the Contract and refund; part or all of that Customers deposit, less any fees or costs associated with the application and this may include any Supplier imposed, covenant, condition, or term whatsoever.

5.6 Time for payment for the Goods/Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:

- (a) on completion of the Goods/Services or prior to dispatch of the Goods/Services from the supplier or in the case of international importation of Goods/Services, prior to or on arrival of the Goods/Services to a New Zealand port and payments may be;
  - (i) by way of progress payments in accordance with the Supplier's specified progress payment schedule and such progress payment claims may include the reasonable value claim of authorised variations and the value of any Goods/Services already dispatched or delivered or ready to dispatch;
- (b) for certain approved Customer's, the due date is either seven (7) days, or twenty (20) days following the end of the month in which a invoice/statement is posted to the Customer's regular email address and/or any specific address for notices;
- (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier;
- (d) Due immediately or within 24 hours of invoicing/billing or on demand by the Supplier to the Customer.

5.7 Payment to be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Supplier.

5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier, nor to withhold payment of any invoice because part of that invoice is in dispute.

5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Services. The Customer must

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pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**6. Delivery Time Frame of Goods/Services Ordered**

- 6.1 The Goods/Services' commencement/production date will be scheduled/estimated by the Supplier in an attempt to achieve the agreed deadlines of the customer, however, if for some unforeseen circumstance, production or the suppliers procurement of product is delayed, the supplier will as soon as practical, notify the customer to advise the delay and extend the delivery date by whatever time is reasonable under the circumstances and in such a circumstance the customer agrees not to hold the supplier responsible for consequences of damage from such delays.
- 6.2 The Customer accepts and understands Goods/Services sent to them, can be via a third party transport provider, therefore the Supplier has no control over exact delivery time frames and all times delivery time frames are estimated to within 15 working days.
- 6.3 In the event that the Supplier claims an extension of time is required to fulfill delivery caused by insufficient stock/s to supply or unforeseen delays in the Suppliers procurement of the Goods/Services, the Supplier at its sole discretion may allow the customer the option to;
- (a) change to an equivalent stock product, (if one is available); or
  - (b) reduce the quantity of Goods/Services supplied or;
  - (c) Allow the Customer to receive part of the Goods/Services with a final Customer payment apportionately reduced by the Goods/Services outstanding until such a time when all Goods/Services are dispatched to the Customer.
  - (d) notify the Supplier that they are ready for the Goods/Services.
- 6.4 The Supplier may deliver the Goods/Services 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 Supplier for delivery of the Goods/Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods/Services as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Goods/Services at a later time and date, and/or for storage of the Services.

**7. Covid 19 pandemic effects and global economic stresses**

- 7.1 The customer shall accept all risks naturally or unnaturally imposed by the effects of Covid 19 or any other pandemic or global economic stress; These can include but are not limited to; time frames of delivery of Goods/Services, the type and colour, and variations required to prices quoted in order for the Supplier to deliver on any contract.
- 7.2 The Customer shall not hold the Supplier liable for any damages in the event supply or trading issues arise through these effects and they shall agree at all times to co-operate without charge to the Supplier until their contract is fulfilled as best as possible.
- 7.3 The Customer acknowledges and accepts with such events, the risks of any change to their contract may be needed with the real possibility any such quoted prices may need to be increased by the Supplier in order to fulfill the customers order. In such instances the supplier shall notify and reasonably justify any change to any quoted price and the customer shall endeavour to reasonably accept such needed change or seek to amend the contract with the Supplier by mutual agreement, provided that such amendment will in essence not create any loss for the Supplier.

**8. Risk**

- 8.1 If the Supplier retains ownership of the Services under clause 13 then:
- (a) where the Supplier is supplying Services only, all risk for the Services shall immediately pass to the Customer on delivery and the Customer must insure the Services on or before delivery. Delivery of the Services shall be deemed to have taken place immediately at the time that the Services are delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- 8.2 At the Supplier's sole discretion, the cost of the delivery of Goods/Services is in addition to the Price.
- 8.3 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests the Supplier to leave Services outside the Supplier's premises for collection or to deliver the Services to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Services are insured adequately or at all. In the event that such Services are lost, damaged or destroyed then replacement of the Services shall be at the Customer's expense.
- 8.4 The Customer warrants that any structures to which the Services are to be affixed are able to withstand the installation of the Services once installed. If for any reason (including the discovery of asbestos, erosion, etc.) that the Supplier, or employees of Supplier, reasonably form the opinion that the Customer's premises is not safe for the installation of Services to proceed then the Supplier shall be entitled to delay installation of the Services (in accordance with the provisions of clause 6.1 above) until the Supplier is satisfied that it is safe for the installation to proceed.
- 8.5 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Supplier's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier.
- 8.7 Where the Customer has provided instructions or specifications for the Supplier to complete the Goods/Services (including, but not limited to, any requested variation to the original design), then the Supplier shall accept no liability whatsoever for the finished Goods/Services being deemed as unsatisfactory to the Customer.
- 8.8 Where the Supplier gives advice or recommendations to the Customer, or the Customers agent, regarding the suitability of the work site for the laying of concrete slabs, foundations or similar Goods/Services and such advice or recommendations are not acted upon then the Supplier

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- shall require the Customer or their agent to authorise commencement of the Goods/Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Goods/Services.
- 8.9 Where the Customer has supplied Services for the Supplier to complete the Goods/Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Services. The Supplier shall not be responsible for any defects in the Goods/Services, any loss or damage to the Services (or any part thereof), howsoever arising from the use of Services supplied by the Customer.
- 8.10 The Customer acknowledges that Services supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.11 In the event that the worksite is disturbed due adverse weather conditions, the Customer acknowledges that they shall be liable for the cost of rectification.
- 8.12 The Supplier shall not be liable for any defect in the Services/Goods/Services if the Customer does not follow the Supplier's recommendations.
- 9. Access**
- 9.1 The Customer shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the Goods/Services. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, lawns, plants, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, earth moving equipment or other equipment/machinery as may be deemed necessary by the Supplier.
- 10. Underground Locations**
- 10.1 Prior to the Supplier commencing any work the Customer must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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.
- 10.2 Whilst the Supplier will take all care to avoid damage to any underground services the Customer agrees to indemnify the Supplier 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 10.1.
- 11. Customer's Responsibilities**
- 11.1 It is the intention of the Supplier and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Goods/Services to be undertaken (where in the Supplier' opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 11.2 The Customer agrees to remove any furniture, furnishings or personal Goods/Services from the vicinity of the Goods/Services and agrees that the Supplier shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
- 12. Surplus Services**
- 12.1 Unless otherwise stated elsewhere in this contract:
- (a) demolished Services remain the Customer's property; and
  - (b) Services which the Supplier brings to the site which are surplus remain the property of the Supplier.
- 13. Title**
- 13.1 The Supplier and the Customer agree that ownership of the Services shall not pass until:
- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
  - (b) the Customer has met all of its other obligations to the Supplier.
- 13.2 Receipt by the Supplier 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Services passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Services and unless the Services have become fixtures must return the Services to the Supplier on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Services on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Services being lost, damaged or destroyed.
  - (c) the production of these terms and conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries.
  - (d) the Customer must not sell, dispose, or otherwise part with possession of the Services other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Services then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
  - (e) the Customer should not convert or process the Services or intermix them with other Goods/Services but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
  - (f) unless the Services have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Services are kept and recover possession of the Services.
  - (g) the Supplier may recover possession of any Services in transit whether or not delivery has occurred.
  - (h) the Customer shall not charge or grant an encumbrance over the Services nor grant nor otherwise give away any interest in the Services while they remain the property of the Supplier.
  - (i) the Supplier may commence proceedings to recover the Price of the Services sold notwithstanding that ownership of the Services has not passed to the Customer.

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**14. Personal Property Securities Act 1999 (“PPSA”)**

- 14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Services and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Goods/Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 14.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Services charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and
  - (d) immediately advise the Supplier of any material change in its business practices of selling Services which would result in a change in the nature of proceeds derived from such sales.
- 14.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 14.1 to 14.5.

**15. Security and Charge**

- 15.1 In consideration of the Supplier agreeing to supply the Goods/Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Customer indemnifies the Supplier from and against all the Supplier’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier’s rights under this clause.
- 15.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer’s behalf.

**16. Defects In Goods/Services**

- 16.1 The Customer shall inspect the Services on delivery and shall within three (3) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier’s liability is limited to either (at the Supplier’s discretion) replacing the Services or repairing the Services.
- 16.2 Services will not be accepted for return other than in accordance with 16.1 above.
- 16.3 Any Goods/Services or services supplied by the supplier to the customer which are free, complimentary or a give away and have no specific transaction charge for payment, are not warranted or covered under the Consumer Guarantees Act 1993 and the Customer accepts that these specific Goods/Services or services are received and used by the customer at their own risk and therefore the customer indemnifies the supplier for any and all claims of damages, defects or failings arising out of these Goods/Services or services supplied. For clarity, any services not charged for such as, but not limited to, quotations/estimations, quantifying services, free advice, or other free Goods/Services or giveaways, are a “free service”, regardless of whether the customer shall enter into a subsequent contract arising out of those Goods/Services or services.
- 16.4 Any Goods/Services or Services supplied for trade or commercial purposes shall not be covered by the Consumers Guarantees Act 1993.
- 16.5 Where any Goods/Services are supplied to any customer at a cost rate plus 10% or less, or labelled as an “ITP” discount, that Customer agrees and accepts they:
- (a) shall be treated as an “independent trader” (ITP) having purchased those Goods/Services or services without any warranties whatsoever from the Supplier and they shall provide and back their own warranties for those Goods/Services purchased at this specific price arrangement. (For clarity such an arrangement shall be deemed to be under this clause if any pricing, invoice, or statement from the supplier states the price is at an “INDEPENDANT TRADE PRICE ” (ITP). However, if that product has an original manufacturer warranty then that ITP may make a claim via the Supplier against those warranties provided any costs incurred by the Supplier in administration on the ITP behalf are covered by that ITP.
- 16.6 The customer acknowledges that it shall not be up to the Supplier to determine the validity of Customers right to purchase at an “Independent Trade Price” as the Supplier need only rely on the Customers acceptance of that contract as proof of such validity and;
- (a) If within 3 days of any contract acceptance, or at the sole discretion of the Supplier, the Customer realises or learns that it should not have been classed by the Supplier as an “ITP” then it should immediately notify the Supplier and pay any monies owed to the Supplier as if that contract price was at normal Supplier, wholesale, trade or retail customer pricing rates and in that instance the Supplier may reinstate all consumer warranties applicable to those price rates.

**17. Returns**

- 17.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
  - (b) the Supplier has agreed in writing to accept the return of the Services; and
  - (c) the Services are returned at the Customer’s cost within seven (7) days of the delivery date; and
  - (d) the Supplier will not be liable for Services which have not been stored or used in a proper manner; and

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- (e) the Services 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.
  - (f) The clients agrees that the Supplier can charge a restocking fee of 45% on all original un-opened packaged items and/or at the Suppliers sole discretion, on any items opened or left over from any single packaged amount, a restocking fee of 75% of the retail price. In this and all events, this is in additional, to any recollection transport costs the Supplier may incur to effect restocking of any such items.
  - (g) The client acknowledges and agrees it is at the Suppliers sole discretion to accept the return of any unwanted product.
- 17.2 The Supplier will not accept the return of Services for credit.
- 17.3 Non-stocklist items or Services made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 18. Warranties**
- 18.1 For Services not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods/Services/Services. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods/Services/Services.
- 19. Consumer Guarantees Act 1993**
- 19.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Supplier to the Customer.
- 20. Intellectual Property**
- 20.1 Where the Supplier has designed, drawn, written plans or a schedule of Goods/Services, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 20.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 20.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Supplier has created for the Customer.
- 21. Default and Consequences of Default**
- 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Supplier may have under this contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 21.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by the Supplier;
  - (c) the Customer 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 Customer or any asset of the Customer.
- 22. Compliance with Laws**
- 22.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services.
- 22.2 The Customer shall obtain (at the expense of the Customer) all licenses, approvals, applications and permits that may be required for the Goods/Services.
- 22.3 The Customer agrees that the site will comply with any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.
- 23. Cancellation**
- 23.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/Services to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 23.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Services at any time before the Goods/Services are commenced by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for Goods/Services already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Customer cancels the delivery of Goods/Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

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- 23.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 24. Privacy Act 1993**
- 24.1 The Customer authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 24.2 Where the Customer is an individual the authorities under clause 24.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.3 The Customer shall have the right to request the Supplier for a copy of the information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Customer held by the Supplier.
- 25. Service of Notices**
- 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 contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 26. Trusts**
- 26.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) The Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 27. Construction Contracts Act 2002**
- 27.1 The Customer hereby expressly acknowledges that:
- (a) the Supplier 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 Customer, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Supplier by a particular date; and
    - (iv) the Supplier has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if the Supplier 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 Customer or by any person claiming through the Customer; 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 Supplier 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 Supplier under the Contractual Remedies Act 1979; or
    - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Supplier suspending work under this provision.

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**28. General**

- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts of New Zealand.
- 28.3 Unless explicitly allowed within any New Zealand legislation, nothing in these terms shall diminish any consumer rights under the Fair trading Act 1986 or The Consumer Guarantees Act 1993.
- 28.4 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Services).
- 28.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 28.6 The Customer cannot licence or assign without the written approval of the Supplier.
- 28.7 The Supplier may elect to subcontract out any part of the Goods/Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-Suppliers without the authority of the Supplier.
- 28.8 The Customer agrees that the Supplier may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Goods/Services to the Customer.
- 28.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, pandemic, flood, storm or other event beyond the reasonable control of either party.
- 28.10 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.
- 28.11 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).

**29. Transportation of Goods/Services**

- 29.1 The Supplier and/or its agent is authorised by the customer to deliver the Goods/Services at the nominated address given in writing to The Supplier and/or its agent by the Customer for that purpose and it is expressly agreed that The Supplier and/or its agent shall be taken to have delivered the Goods/Services in accordance with this Contract if at that address The Supplier and/or its agent obtains from any person a receipt or a signed delivery docket for the Goods/Services.
- 29.2 The Supplier and/or its agent may deliver the Goods/Services by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 29.3 Delivery of the Goods/Services to a third party nominated by the Customer is deemed to be delivery for the purposes of this Contract.
- 29.4 It is the Customer's sole responsibility to provide The Supplier and/or its agent with accurate delivery instructions and unobstructed access to the nominated address to enable effective delivery, including ensuring that trees are trimmed or cut back along driveways, and/or (for self-load or self-unload) ensuring that foot or vehicular traffic is not impeded and that public safety is considered. If delivery cannot be affected by The Supplier and/or its agent (whether due to obstructed access to the nominated address or otherwise) then The Supplier and/or its agent at its sole discretion may:
- (a) deposit the Goods/Services in the nearest and safest position to the address, and such action will be deemed to constitute valid delivery; or
  - (b) obtain the use of Hiab or other vehicle/equipment, and charge the Customer any costs incurred by The Supplier and/or its agent in so doing; or
  - (c) refuse to effect delivery and instead store the Goods/Services, in which case the Customer shall be liable for, and shall reimburse The Supplier and/or its agent for all costs and expenses incurred in connection with such storage.
- 29.5 The customer agrees to organise and or provide adequate assistance to the delivery driver if so called upon by the driver for unloading and/or loading of Goods/Services at the customer's address. It is the customers ultimate responsibility to ensure adequate assistance is available to unload the delivery vehicle at the nominated address and;
- (a) The assistance provided by the customer, shall not be time dependant on that delivery arriving at any particular time given and must be flexible to allow for any delays in arrival of the Goods/Services and;
  - (b) that assistance is able to lift and carry off the delivery vehicle any such "heavy lift" Goods/Services and;
  - (c) be sufficient to unload the delivery vehicle within 20 minutes and;
  - (d) not be reliant on the delivery driver to handle the Goods/Services beyond the delivery vehicles perimeter.
- 29.6 The Customer shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including ensuring that the nominated address complies with any WorkSafe guidelines and any other relevant safety standards or legislation and as part of this purpose the Customer shall;
- (a) Listen too and act on any reasonable Health and Safety instruction from any delivery driver and;
  - (b) From time to time comply with any specific New Zealand Government imposed health orders or any other local bylaw requirements.
- 29.7 If the Customer requests The Supplier and/or its agent;
- (a) to make delivery of the Goods/Services to a subsequent address, then The Supplier and/or its agent may, at their sole discretion, charge the Customer the additional costs associated with doing so;
  - (b) to assist in unloading the Goods/Services (either by hand or through the use of any machinery, including forklifts) then The Supplier and/or its agent shall only do so at their sole discretion, and;
  - (c) the Supplier and/or its agent may charge the Customer the additional costs associated with doing so:



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- 29.8 The Customer acknowledges that they accept full liability for all property loss or damage, or injury to any person that may result from the actions of The Supplier and/or its agent in providing such assistance; and  
(a) notwithstanding that The Supplier and/or its agent may refuse such assistance without any liability to the Customer whatsoever should they believe that the Health & Safety risk in providing such assistance is unacceptable.
- 29.9 In the event that The Supplier and/or its agent stores the Goods/Services then The Supplier and/or its agent will re-deliver the Goods/Services to the nominated address at a time mutually agreed between the parties. The Customer shall be liable for any costs incurred by The Supplier and/or its agent in both the initial delivery and the re-delivery.
- 29.10 Any time frame specified by The Supplier and/or its agent for the delivery of Goods/Services is an “estimate only” and The Supplier and/or its agent will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Services to be delivered at the time and place as was arranged between both parties. In the event that The Supplier and/or its agent is unable to deliver the Goods/Services as agreed solely due to any action or inaction of the Customer then The Supplier and/or its agent shall be entitled to charge the Customer any additional costs incurred by The Supplier and/or its agents a direct consequence of any resultant delay or rescheduling of the delivery.