
Ecodemo Windows & Doors – Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means Eco Demolition & Building Suppliers Limited T/A Ecodemo Windows & Doors, its successors and assigns or any person acting on behalf of and with the authority of Eco Demolition & Building Suppliers Limited T/A Ecodemo Windows & Doors.
- 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 Services as specified in any proposal, quotation, order, invoice or other documentation, 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" means all Goods or 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).
- 1.4 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with clause 5 below.

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 places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Supplier.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Sections 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The 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 Services.
- 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 any invoice provided by the Supplier to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or
 - (c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limited access to the site, poor weather conditions, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Customer, or change of design, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control.
- 5.3 Variations will be charged for on the basis of the Supplier's quotation, and 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 ten (10) 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 their completion.
- 5.4 At the Supplier's sole discretion a 40% non-refundable deposit may be required on custom orders with a manufacturing period of 50-60 working days and full payment on stock items.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- (a) before delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule, which shall be either:
 - (i) for custom designed Goods:
 - (A) forty percent (40%) non-refundable deposit upon acceptance of the quote;
 - (B) remaining balance due before delivery and/or collection of the Goods; or
 - (ii) where the Supplier is to supply and install the Goods:
 - (A) forty percent (40%) non-refundable deposit upon acceptance of the quote;
 - (B) remaining balance of the good to be installed will need to be paid hundred percent (100%) plus fifty percent (50%) of installation cost;
 - (C) remaining balance of fifty percent (50%) of installation due on completion of the Services; or

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- (c) for certain credit approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.
- 5.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Supplier.
- 5.7 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the retention money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Monies applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 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 Goods. The Customer must 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 of Goods

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At the Supplier's sole discretion the cost of delivery is in addition to the Price.
- 6.3 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by the Supplier for delivery of the Goods 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 to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 7.3 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 7.4 The Customer acknowledges that:
- (a) Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish. 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; and
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching; and
 - (b) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect.
- 7.5 The Supplier shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
- 7.6 The Customer acknowledges that the Supplier is only responsible for parts that are supplied by the Supplier and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify the Supplier against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 7.7 Where the Customer has supplied materials for the Supplier to complete the Services, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. The Supplier shall not be responsible for any defects in the Services, any loss or damage howsoever arising from the use of materials supplied by the Customer.
- 7.8 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods provided is given in good faith, is based on Supplier own knowledge and experience and shall be accepted without liability on the part of the Supplier and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.

8. Access/Installation

- 8.1 Where the Supplier is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Supplier shall not be

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liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

8.2 The Customer shall:

- (a) ensure that the Supplier has clear and free access to the worksite at all times to enable them to undertake the Services and/or effect Delivery of the Goods. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier; and
- (b) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between the Supplier and the Customer, any additional costs will be invoiced to the Customer as an extra; and
- (c) fully disclose any information that may affect the Suppliers installation procedures; and
- (d) provide adequate dustsheets to protect the Customer's furniture and décor. The Supplier will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any installation procedures; and
- (e) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by the Supplier in this regard.

8.3 The Supplier is not insured to remove furniture or fittings and will not do so.

9. Dimensions, Plans and Specifications

9.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless the Supplier and the Customer agree otherwise in writing.

9.2 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.

9.3 If the giving of an estimate or quotation for the supply of Goods involves the Supplier estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of the Supplier's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.

9.4 Should the Customer require any changes to the Supplier's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

9.5 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.

9.6 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

10. Compliance and Consents

10.1 The Customer agrees that the site will comply with any WorkSafe guidelines and the Health and Safety at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.

10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.

10.3 The Supplier has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, the Supplier shall not be the person who controls the place of work in terms of the HSW Act.

11. Title

11.1 The Supplier and the Customer agree that ownership of the Goods 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.

11.2 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.

11.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 11.1:

- (a) the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods 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.
- (d) the Customer should not convert or process the Goods or intermix them with other goods 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.
- (e) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
- (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

12.1 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

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- (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 12.2 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 Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods 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 the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 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.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 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.
- 12.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 12.1 to 12.5.

13. Security and Charge

- 13.1 In consideration of the Supplier agreeing to supply the Goods, 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).
- 13.2 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.
- 13.3 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 13 including, but not limited to, signing any document on the Customer's behalf.

14. Defects

- 14.1 The Customer shall inspect the Goods immediately upon delivery and shall 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 Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, 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 Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above.

15. Warranty

- 15.1 Subject to the conditions of warranty set out in clause 15.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within two (2) years from the date of installations, or five (5) years on all new hardware products supplied or fifteen (15) years in respect of powder coating and extrusion, of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace the Goods or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause **Error! Reference source not found.** 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 Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Supplier; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods 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 Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
 - (c) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.3 Goods manufactured by the supplier are made in China to suit New Zealand Building Code but not tested in New Zealand.
- 15.4 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. 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.

16. Consumer Guarantees Act 1993

- 16.1 If the Customer is acquiring Goods 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 Goods by the Supplier to the Customer.

17. Intellectual Property

- 17.1 Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

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- 17.2 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.
- 17.3 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 or Goods which the Supplier has created for the Customer.

18. Default and Consequences of Default

- 18.1 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.
- 18.2 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).
- 18.3 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 18 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.
- 18.4 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, 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.

19. Cancellation

- 19.1 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 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.
- 19.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels delivery of Goods 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).
- 19.4 Cancellation of orders for Goods 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.

20. Dispute Resolution

- 20.1 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).

21. Construction Contracts Act 2002

- 21.1 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 Contract and Commercial Law Act 2017; 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.

22. Privacy Act 1993

- 22.1 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.
- 22.2 Where the Customer is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 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.

23. Service of Notices

- 23.1 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.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the 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.

25. General

- 25.1 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.
- 25.2 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 Waitakere District Courts of New Zealand.
- 25.3 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).
- 25.4 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.
- 25.5 The Customer cannot licence or assign without the written approval of the Supplier.
- 25.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 25.7 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 to the Customer.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.