

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Cookies”** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Supplier's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Works 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 partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.5 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.6 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between the Supplier and the Customer in accordance with clause 7 below.
- 1.7 **“Supplier”** means Betta Developments Limited T/A Sheds and Shelters, its successors, and assigns.
- 1.8 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.9 **“Worksite”** means the address nominated by the Customer to which the Materials are to be supplied by the Supplier.

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 any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and agrees that:
- (a) the supply of Works on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account;
 - (b) In the event that the supply of Works requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery; and
 - (c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Supplier reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 7.2. In all such cases the Supplier will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Works on hold until such time as the Supplier and the Customer agree to such changes.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Supplier as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Materials or Works on the Customer's behalf and/or to request any variation to the Materials or Works on the Customer's behalf (such authority to continue until all requested Materials or Works have been completed or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Works, Materials or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 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 Works.

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- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Change in Control**
- 5.1 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.
- 6. On-Line Ordering**
- 6.1 The Customer acknowledges and agrees that:
- (a) the Supplier does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Materials; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Supplier;
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such the Supplier cannot warrant against delays or errors in transmitting data between the Customer and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Customer suffers as a result of on-line ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by the Supplier and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
 - (f) if the Customer is not the cardholder for any credit card being used to pay for the Materials, the Supplier shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 6.2 The Supplier reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Supplier's business, or violated these terms and conditions.
- 7. Price and Payment**
- 7.1 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 Works performed or Materials supplied; or
 - (b) the Supplier's Price at the date of delivery of the Works according to the Supplier's current price list; or
 - (c) the Supplier's quoted Price (subject to clause 7.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within thirty (30) days.
- 7.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, ready availability of Materials, variations in quantity or volume of Materials to be supplied, time schedule, obscured Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, as a result of delays from third party suppliers, prerequisite work by any third party not being completed, lack of required utilities, hard rock barriers below the surface, latent soil conditions, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Supplier in the cost of labour or Materials (including, but not limited to, overseas transactions that may increase, as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, etc.) which are beyond the Supplier's control.
- 7.3 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.
- 7.4 At the Supplier's sole discretion, a non-refundable deposit may be required.
- 7.5 Time for payment for the Works 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 Works;
 - (b) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed;
 - (c) for certain approved 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.
- 7.6 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 Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be use other than to remedy defects in the performance of the Supplier's obligations under the Contract.

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- 7.7 Payment may be made by cash, 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.
- 7.8 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 7.9 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, unless the request for payment by the Supplier is a claim made under the Construction Contracts Act 2002. Nothing in this clause 7.9 prevents the Customer from the ability to dispute any invoice.
- 7.10 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 agreement for the sale of the Materials. 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.

8. Provision of the Works

- 8.1 Subject to clause 8.2 it is the Supplier's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 8.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify the Supplier that the Worksite is ready.
- 8.3 At the Supplier's sole discretion, the cost of delivery is in addition to the Price.
- 8.4 The Supplier may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.5 Any time specified by the Supplier for delivery of the Works 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 Works 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 Works 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 Works at a later time and date, and/or for storage of the Materials.

9. Kitsets

- 9.1 A full Materials list will be provided by the Supplier upon delivery of the kitset. The Customer shall be responsible for checking that Materials provided match the list with any shortages or damages being notified to the Supplier within seven (7) days of delivery. Failure to notify the Supplier within this time, the Supplier shall be entitled to accepting that the Materials are deemed to be correct and delivered.

10. Risk

- 10.1 If the Supplier retains ownership of the Materials under clause 16 then:
- (a) where the Supplier is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at the Supplier's address; or
 - (ii) the Materials 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).
 - (b) unless otherwise agreed, where the Supplier is to both supply and install Materials then the Supplier shall maintain a Contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 10.2 Notwithstanding the provisions of clause 10.1 if the Customer specifically requests the Supplier to leave Materials outside the Supplier's premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 10.3 The Customer warrants that any structures or land (where applicable) to which the Materials are to be affixed are able to withstand the installation of the Materials once installed. If for any reason (including the discovery of asbestos, moisture, erosion, etc.) that the Supplier, or employees of the Supplier, reasonably form the opinion that the Customer's premises is not safe for the installation of Materials to proceed then the Supplier shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 8.2 above) until the Supplier is satisfied that it is safe for the installation to proceed.
- 10.4 Any advice, recommendation, information, assistance, or service provided by the Supplier in relation to Materials or Works supplied is given in good faith to the Customer, or the Customer's agent and is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier. Where such advice or recommendations are not acted upon then the Supplier shall require the Customer or their agent to authorise commencement of the Works 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 Works nor will such losses or damages be deemed a defect. If the Customer instructs the Supplier to rectify any damage or defects in the materials supplied, this will become a variation to the original quotation and will be charged at the Supplier's normal hourly rate.
- 10.5 Timber is a hygroscopic material subject to expansion and contraction, therefore the Supplier will accept no responsibility for gaps that may appear in the timber and timber flooring during prolonged dry periods.

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- 10.6 The Customer acknowledges that Materials supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time;
 - (b) expand, contract, or distort as a result of exposure to heat, cold, weather;
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 10.7 Whilst every effort will be taken by the Supplier to match virtual colours with physical colours, the Supplier will take no responsibility for any variation between the virtual sale sample displayed on the Customer's computer and/or the supplied Materials.
- 10.8 The Supplier shall not be responsible for removal of soil from the Worksite.
- 10.9 Whilst the Supplier will take all due care during installation the Supplier will not accept any responsibility for tiles or pavers damaged during installation.

11. Specifications

- 11.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in the Supplier's website, 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 Customer.

12. Accuracy Of Plans

- 12.1 All customary building tolerances shall apply to the dimensions and measurements of the Materials unless the Supplier and the Customer agree otherwise in writing.
- 12.2 The plans, specifications (including CAD plans) and other information provided by the Customer to the Supplier are accurate. The Customer acknowledges and agrees that in the event that any plans, specifications (including CAD plans) or information provided by the Customer is inaccurate and the Supplier:
- (a) accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
 - (b) is entitled to suspend or terminate the supply of Materials or Works to the Customer if there is a material change to the scope of Works as a result of inaccurate plans, specifications or other information; and
 - (c) 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.

13. Worksite Access and Condition

- 13.1 The Supplier is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by the Supplier will be placed in a designated area appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
- 13.2 It is the intention of the Supplier and agreed by the Customer that:
- (a) the Customer shall ensure that the Supplier has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Supplier shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier;
 - (b) the Customer acknowledges and agrees that in the event the Supplier requires access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated Worksite, that is not owned by the Customer, then it is the Customer's responsibility to gain permission from the landowner to use the above-mentioned property throughout the process or delivering the Works. In the event the landowner denies access or use of the land or property, the Customer shall be liable for all costs incurred by the Supplier in gaining permission to access and/or use the property through any legal process that may be deemed necessary;
 - (c) 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;
 - (d) it is the Customer's responsibility to provide the Supplier, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - (e) where the Supplier requires that Materials, equipment, plant, and tools etc. required for the Works be stored at the Worksite, the Customer shall supply the Supplier a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft, or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 13.3 The Customer agrees to be present at the Worksite when and as reasonably requested by the Supplier and its employees, contractors and/or agents.
- 13.4 *Worksite Inductions*
- (a) in the event the Customer requires an employee or sub-contractor of the Supplier to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay the Supplier's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the Supplier is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out the Supplier's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by the Supplier.

14. Underground Locations

- 14.1 Prior to the Supplier commencing any work the Customer must advise the Supplier of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to,

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- electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 14.2 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 14.1.
- 15. Compliance with Laws**
- 15.1 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 Works, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 15.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 15.3 Where the Customer has supplied products for the Supplier to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Supplier's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then the Supplier shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 7.2.
- 15.4 The Customer shall obtain (at the expense of the Customer) all licenses, engineering reports, and approvals that may be required for the Works.
- 15.5 Notwithstanding clause 15.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Supplier agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.
- 16. Title**
- 16.1 The Supplier and the Customer agree that ownership of the Materials 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.
- 16.2 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.
- 16.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 16.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by the 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 Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials 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 Materials 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;
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials;
 - (g) the Supplier may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Supplier; and
 - (i) the Supplier may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1 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 Materials that have previously been supplied and that will be supplied in the future by the Supplier to the Customer and the proceeds from such Materials as listed by the Supplier to the Customer in invoices rendered from time to time.
- 17.2 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 Materials charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of the Supplier; and

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- (d) immediately advise the Supplier of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 17.3 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.
- 17.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 17.5 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.
- 17.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 17.1 to 17.5.
- 17.7 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 18. Security and Charge**
- 18.1 In consideration of the Supplier agreeing to supply the Works, 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, and the Customer grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 18.2 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.
- 18.3 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 18 including, but not limited to, signing any document on the Customer's behalf.
- 19. Defective Materials**
- 19.1 The Customer shall inspect the Materials on delivery. In the event that any Materials are damaged, or suspected as being damaged, the Customer must:
- (a) indicate this on the delivery docket (by writing "damaged");
 - (b) ensure the freight company is aware of such; and/or
 - (c) within seven (7) days of delivery (time being of the essence) notify the Supplier via email of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote.
- 19.2 The Customer shall afford the Supplier an opportunity to inspect the Materials within a reasonable time following notification (as per clause 19.1(c)) if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the 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 Materials or repairing the Materials.
- 20. Returns**
- 20.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 19.1;
 - (b) the Supplier has agreed in writing to accept the return of the Materials;
 - (c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date;
 - (d) the Supplier will not be liable for Materials which have not been stored or used in a proper manner; and
 - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures, and instruction material in as new condition as is reasonably possible in the circumstances.
- 20.2 Defective Materials will only be accepted for return where the Customer has complied with the provisions of clause 19.1.
- 20.3 The Supplier may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.
- 20.4 Subject to clause 19.2, non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 21. Warranties**
- 21.1 Subject to the conditions of warranty set out in clause 21.2 the Supplier warrants that if any defect in any workmanship provided by the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the defect.
- 21.2 The conditions applicable to the warranty given by clause 21.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Materials or serviced item; 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 Materials or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (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.
- 21.3 For Materials not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Materials. 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 Materials.

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- 21.4 In the case of second-hand Materials, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
- 22. Consumer Guarantees Act 1993**
- 22.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 (“CGA”) do not apply to the supply of Materials by the Supplier to the Customer.
- 23. Intellectual Property**
- 23.1 Where the Supplier has designed, drawn, written plans or a schedule of Works, 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.
- 23.2 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.
- 23.3 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.
- 24. Default and Consequences of Default**
- 24.1 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.
- 24.2 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).
- 24.3 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 24, 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.
- 24.4 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.
- 25. Cancellation**
- 25.1 Without prejudice to any other rights or remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice/s) then the Supplier may suspend or terminate the supply of the Works. 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.
- 25.2 The Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the 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 Works already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 25.3 In the event that the Customer cancels the delivery of Works 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).
- 25.4 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.
- 26. Privacy Policy**
- 26.1 All emails, documents, images or other recorded information held or used by the Supplier is “**Personal Information**” as defined and referred to in clause 26.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (“the Act”) including Part II of the OECD Guidelines and as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 26.2 Notwithstanding clause 26.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier’s website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer’s:
- (a) IP address, browser, email client type and other similar details;

- (b) tracking website usage and traffic; and
- (c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")

If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 26.3 The Customer authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the 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.
- 26.4 Where the Customer is an individual the authorities under clause 26.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 26.5 The Customer shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 26.6 The Supplier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 26.7 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

27. Suspension of Works

- 27.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, 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 in accordance with clause 7.5 and/or any subsequent amendments or new legislation 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;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes the Supplier from continuing the Works or performing or complying with the Supplier's obligations under this Contract, then without prejudice to the Supplier's other rights and remedies, the Supplier may suspend the Works immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by the Supplier as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 27.2 If pursuant to any right conferred by this Contract, the Supplier suspends the Works and the default that led to that suspension continues unremedied subject to clause 25.1 for at least ten (10) working days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 25.

28. Service of Notices

- 28.1 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.
- 28.2 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.

29. Trusts

- 29.1 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.

30. General

- 30.1 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 section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 30.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 30.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton Courts of New Zealand.
- 30.4 Subject to the CGA, 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 Works).
- 30.5 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.
- 30.6 The Customer cannot licence or assign without the written approval of the Supplier.
- 30.7 The Supplier may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the 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.
- 30.8 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to 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 Works to the Customer.
- 30.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Supplier.
- 30.10 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.