
Stormwater Systems Limited T/A Watersmart – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Buyer”** means the person/s, entities or any person acting on behalf of and with the authority of the Buyer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Buyer, is a reference to each Buyer jointly and severally; and
 - (b) if the Buyer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Buyer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Buyer’s executors, administrators, successors and permitted assigns.
- 1.2 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Buyer does not wish to allow Cookies to operate in the background when using the Seller’s website, then the Buyer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.4 **“Services”** means all Goods or Services (including any advice, recommendations or installations) supplied by the Seller to the Buyer at the Buyer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Seller and the Buyer in accordance with clause 7 below.
- 1.6 **“Seller”** means Stormwater Systems Limited T/A Watersmart, its successors and assigns.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
 - (c) the words ‘include’ and ‘including’, and any variants of those words, will be treated as if followed by the words ‘without limitation’;
 - (d) a reference to dollars (\$), is a reference to New Zealand currency;
 - (e) this Contract is not to be interpreted against the Seller merely because they prepared this Contract; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) terms and conditions of trade; and
 - (ii) any schedules.
 - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.
- 3.2 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.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Buyer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Buyer has completed a credit application with the Seller and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods requested exceeds the Buyer’s credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery;
 - (c) the Seller may charge:
 - (iii) a call out fee and any applicable charges for any on site amendments; and
 - (iv) for altering Goods or freight for sourcing alternative and returning Goods.
 - (d) lead times of up to four (4) weeks may apply to the Goods and Services selected (subject to current production levels). The lead time shall commence after receipt of payment and upon receipt of this signed Contract; and
 - (e) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 7.3. In all such cases the Seller will notify the Buyer in advance of any such substitution, and also reserves the right to place the Buyer’s order on hold until such time as the Seller and the Buyer agree to such changes.
- 3.5 For the purposes of this Contract a “business day” shall mean any day between the hours of 9.00am to 5.00pm, which is not a Saturday, Sunday, public holiday, special holiday, or a bank holiday in New Zealand, including a day in the period commencing on the 24 Decemeber in any year and ending on the 5 January in the following year, which this Contract is applied. If the giving of any notice, the making of any payment, or the doing of any act required or permitted under this Contract, the timing of which falls on a day which is not a business day, then the timing for such actions shall be extended and will be allowed to take place on the next business day, but no later.
- 3.6 Where the Seller gives any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith to the Buyer, or the Buyer’s agent and is based on the Seller’s own knowledge and experience and shall be accepted without liability on the part of the Seller. Where such advice or recommendations are not acted upon then the Seller shall require the

Stormwater Systems Limited T/A Watersmart – Terms & Conditions of Trade

Buyer or their agent to authorise commencement of the Services in writing. The Seller shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

- 3.7 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on the Seller's website. If there are any inconsistencies between the two documents, then the terms and conditions contained in this document shall prevail.
- 3.8 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.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2, the Buyer agrees that should the Buyer introduce any third party to the Seller as the Buyer's duly authorised representative, that once introduced that person shall have the full authority of the Buyer to order any Goods/ Services, and/or to request any variation thereto, on the Buyer's behalf (such authority to continue until all requested Services have been completed, or the Buyer otherwise notifies the Seller in writing that said person is no longer the Buyer's duly authorised representative).
- 4.2 In the event that the Buyer's duly authorised representative, as per clause 4.1, is to have only limited authority to act on the Buyer's behalf then the Buyer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Buyer specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Goods/Services, or variation/s thereto, requested by the Buyer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Errors and Omissions

- 5.1 The Buyer acknowledges and accepts that the Seller 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 Seller 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 Seller in respect of the Services.
- 5.2 If such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Buyer:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
 - (b) shall not be responsible for any additional costs incurred by the Seller arising from the error or omission.

6. Change in Control

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

7. Price and Payment

- 7.1 At the Seller's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Buyer; or
 - (b) the Price as at the date of Delivery of the Goods according to the Seller's current price list; or
 - (c) the Seller's estimated Price (subject to clause 7.3). No allowances shall be made for site preparation unless specified in the estimate. The final price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than 10% will be subject to the Buyer's approval before proceeding with the Services; or
 - (d) the Seller's quoted Price (subject to clause 7.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Quotations do not include installation unless specifically stated.
- 7.3 The Seller 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 plan of scheduled works, specifications or changes to placed orders that the Seller would have to re-design and reconfigure pods which may incur delays in delivery) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, additional site visits, safety considerations, hard rock barriers below the surface or iron reinforcing rods in concrete etc. which are only discovered on commencement of the Services); or
 - (d) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.
- 7.4 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Buyer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller 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.
- 7.5 At the Seller's sole discretion, a reasonable non-refundable deposit may be required.
- 7.6 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:
- (a) on completion of the Services;
 - (b) four (4) days before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule;
 - (d) for certain approved Buyers, due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.
- 7.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Buyer and the Seller.

Stormwater Systems Limited T/A Watersmart – Terms & Conditions of Trade

- 7.8 The Seller may in its discretion allocate any payment received from the Buyer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Buyer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.9 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.10 Unless otherwise stated the Price includes GST. In addition to the Price, the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other contract for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer 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. Dimensions, Plans and Specifications

- 8.1 In the event the Buyer gives information relating to the Goods (including plans, specifications, CAD drawings, measurements, quantities, and other information provided by the Buyer):
- that it is the Buyer's responsibility to verify the accuracy of the information before the Buyer or the Seller places an order based on the information. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Buyer's failure to comply with this clause; and
 - the Seller shall be entitled to rely on the accuracy of such information. The Buyer acknowledges and agrees that in the event that any of this information provided by the Buyer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting therefrom, including any variation to the Goods required due to inaccurate plans provided by the Buyer, such additional Services shall be charged in accordance with clause 7.3.
- 8.2 The Buyer acknowledges that:
- all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Seller's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Buyer 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 Seller;
 - while the Seller may have provided information or figures to the Buyer regarding the performance of the Goods, the Buyer acknowledges that the Seller has given these in good faith, and are estimates based on industry prescribed estimates. The water efficiency may be less than estimates due to factors out of the Seller's control (including, but not limited to, water pressure, water source, the mineral content of water based on geographical location, etc.).

9. Provision of the Services

- 9.1 Subject to clause 9.2 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 9.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Buyer written notice) where completion is delayed by an event beyond the Seller's control and may include additional fees, including, but not limited to, any failure by the Buyer to:
- make a selection;
 - inadequate site preparation;
 - adhere to schedules;
 - delay in receiving engineering or detailed drawings;
 - have the site ready for the Services; or
 - notify the Seller that the site is ready.
- 9.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or
 - the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.
- 9.4 Delivery to a third party nominated by the Buyer is deemed to be Delivery to the Buyer for the purposes of this Contract.
- 9.5 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 9.6 The Seller 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.
- 9.7 The parties acknowledge that the Seller books Delivery two (2) days before the nominated date of Delivery. The Buyer agrees that any changes it makes to the date of Delivery after the booking date, will incur a fee and be charged to the Buyer.
- 9.8 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 Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Buyer, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 10.3 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.
- 10.4 The Buyer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, hazardous materials or the discovery of latent or unfavourable soil conditions such as liquefaction residue or risk, etc.) that the Seller, or employees of the Seller, reasonably form the opinion that the Buyer's premises is not safe for the installation of Goods to proceed then the Seller shall be entitled to

Stormwater Systems Limited T/A Watersmart – Terms & Conditions of Trade

delay installation of the Goods (in accordance with the provisions of clause 9.2 above) until the Seller is satisfied that it is safe for the installation to proceed. Where the Seller is requested to bring any existing pipework up to standard prior to commencement of the Services, this shall be a variation.

- 10.5 Where consultation with engineers or other appropriate third parties occur, all associated costs shall be borne by the Buyer.
- 10.6 Where the Contract does not include installation of the Goods by the Seller, the Seller shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 10.7 The Seller may at its discretion use or recommend contracted installers to install the Goods. The Seller takes care to ensure that these installers are competent, trained and independently insured. Should the Buyer need to make any claim in regards to damage, loss, the performance or conduct of such an installer then the Buyer agrees to make such claim direct to the installer in the first instance and shall only involve the Seller in such a claim if the Buyer is unable to resolve the issue with the installer.
- 10.8 The Seller shall not be held liable for any loss, damage or costs that may be incurred by the Buyer where the Buyer has failed to follow the recommendations and/or instructions provided by the Seller or the manufacturer in the correct use and maintenance of the Goods supplied.
- 10.9 The Buyer acknowledges that the Seller is only responsible for parts that are replaced by the Seller, and in the event that other parts/materials, subsequently fail, the Buyer agrees to indemnify the Seller against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 10.10 The Buyer acknowledges that Goods supplied may:
- (a) 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.
- 10.11 The Seller may at its discretion notify the Buyer that it requires to store at the site Goods, fittings and appliances, or plant and tools required for the Services, in which event the Buyer shall supply the Seller a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Buyer's responsibility.

11. Access

- 11.1 The Buyer shall ensure that the Seller has clear and free access to the site at all times to enable them to undertake the Services. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, concreted, paved or grassed areas or site equipment such as septic tanks) unless due to the negligence of the Seller.
- 11.2 Notwithstanding clause 18.1, the Buyer acknowledges that any claim made to the Seller for damage to the site or site equipment must be lodged with the Seller within twelve (12) hours of completion of the Services, time being of the essence.

12. Underground Locations

- 12.1 Prior to the Seller commencing any work the Buyer must advise the Seller of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Buyer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst the Seller will take all care to avoid damage to any underground services the Buyer agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Insurance

- 13.1 The Seller shall have public liability insurance of at least \$5m. It is the Buyer's responsibility to ensure that they are similarly insured.

14. Compliance with Laws

- 14.1 The Buyer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 14.2 Where the Buyer has supplied products for the Seller to complete the Services, the Buyer 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 Seller's opinion, it is believed that the materials supplied are non-conforming products and will not conform with New Zealand regulations, then the Seller shall be entitled, without prejudice, to halt the Services 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 7.3.
- 14.3 The Buyer shall obtain (at the expense of the Buyer) all licenses and approvals that may be required for the Services.
- 14.4 Notwithstanding clause 14.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Seller 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 site or where they may be acting as a sub-contractor for the Buyer who has engaged a third party head contractor.

15. Title

- 15.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:
- (a) the Buyer has paid the Seller all amounts owing to the Seller; and
 - (b) the Buyer has met all of its other obligations to the Seller.
- 15.2 Receipt by the Seller 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.
- 15.3 It is further agreed that until ownership of the Goods passes to the Buyer in accordance with clause 15.1:
- (a) the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request;

Stormwater Systems Limited T/A Watersmart – Terms & Conditions of Trade

- (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Buyer 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 Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
- (d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
- (e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
- (f) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Buyer 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 Seller; and
- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

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

- 16.1 Upon assenting to these terms and conditions in writing the Buyer 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 Goods that have previously been supplied and that will be supplied in the future by the Seller to the Buyer, and the proceeds from such Goods as listed by the Seller to the Buyer in invoices rendered from time to time.
- 16.2 The Buyer 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 Seller 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 Seller 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 or the proceeds of such Goods in favour of a third party without the prior written consent of the Seller; and
 - (d) immediately advise the Seller 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.
- 16.3 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.4 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 16.1 to 16.3.
- 16.5 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of the Seller agreeing to supply the Goods, the Buyer 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 Buyer either now or in the future, and the Buyer grants a security interest in all of its present and after-acquired property, to secure the performance by the Buyer 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.
- 17.2 The Buyer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 17.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Buyer's behalf.

18. Defects

- 18.1 The Buyer shall inspect the Goods on Delivery and shall within forty-eight (48) hours of Delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following Delivery if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
- 18.2 Goods will not be accepted for return other than in accordance with 18.1 above, and provided that:
- (a) the Seller has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Buyer's cost within seven (7) days of the Delivery date; and
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods 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.
- 18.3 If the Seller accepts that the Buyer is entitled to reject the Goods following their return pursuant to clause 18.2(b) the Seller will reimburse the Buyer's actual and reasonable costs of return Delivery.
- 18.4 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 18.5 Subject to clause 18.1, non-stocklist items or Goods made to the Buyer's specifications are not acceptable for credit or return.

19. Warranty

- 19.1 Subject to the conditions of warranty set out in clause 19.2 the Seller warrants that if any defect in any workmanship provided by the Seller becomes apparent and is reported to the Seller within twenty-four (24) months of the date of Delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the defect.
- 19.2 The conditions applicable to the warranty given by clause 19.1 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 Buyer to properly maintain any Goods or serviced item; or
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods 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 Seller shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without the Seller's consent.
 - (c) in respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Buyer's claim.
- 19.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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.

20. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

- 20.1 If the Buyer is acquiring Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Seller to the Buyer.
- 20.2 The Seller agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

21. Intellectual Property

- 21.1 Where the Seller has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 21.2 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 21.3 The Buyer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.

22. Default and Consequences of Default

- 22.1 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 Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies the Seller may have under this Contract, if a Buyer has made payment to the Seller, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this Contract.
- 22.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;
 - (b) the Buyer has exceeded any applicable credit limit provided by the Seller;
 - (c) the Buyer 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 Buyer or any asset of the Buyer.

23. Cancellation

- 23.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 23.2 If the Seller, due to reasons beyond the Seller's reasonable control, is unable to deliver any Goods and/or Services to the Buyer, the Seller may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods and/or Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 The Buyer may cancel Delivery of the Goods and/or Services by written notice served within ten (10) days of placement of the order. Failure by the Buyer to otherwise accept Delivery of the Goods and/or Services shall place the Buyer in breach of this Contract.
- 23.4 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

24. Privacy Policy

- 24.1 All emails, documents, images or other recorded information held or used by the Seller is “**Personal Information**” as defined and referred to in clause 24.3 and therefore considered confidential. The Seller 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 as set out in the Act. The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Buyer’s Personal Information, held by the Seller that may result in serious harm to the Buyer, the Seller will notify the Buyer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Buyer by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to the Seller in respect of Cookies where the Buyer utilises the Seller’s website to make enquiries. The Seller 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 Buyer’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 Seller when the Seller sends an email to the Buyer, so the Seller may collect and review that information (“collectively Personal Information”).
- If the Buyer consents to the Seller’s use of Cookies on the Seller’s website and later wishes to withdraw that consent, the Buyer may manage and control the Seller’s privacy controls via the Buyer’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 24.3 The Buyer authorises the Seller or the Seller’s agent to:
- (a) access, collect, retain and use any information about the Buyer;
 - (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 Buyer’s creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Buyer.
 - (b) disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller 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 Buyer.
- 24.4 Where the Buyer is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 24.5 The Buyer shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Buyer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information.
- 24.6 The Seller will destroy Personal Information upon the Buyer’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.
- 24.7 The Buyer can make a privacy complaint by contacting the Seller via e-mail. The Seller 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 Buyer is not satisfied with the resolution provided, the Buyer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

25. Suspension of Services

- 25.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Buyer hereby expressly acknowledges that:
- (a) the Seller 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 Buyer, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 7.6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Buyer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Buyer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Buyer has not complied with an adjudicator’s notice that the Buyer must pay an amount to the Seller by a particular date; and
 - (iv) the Seller has given written notice to the Buyer of its intention to suspend the carrying out of work under the Contract.
 - (b) if the Seller 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 Buyer or by any person claiming through the Buyer; 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 Seller 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 Seller under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Buyer to exercise any rights that may otherwise have been available to the Buyer under that Act as a direct consequence of the Seller suspending work under this provision;
 - (d) due to any act or omission by the Buyer, the Buyer effectively precludes the Seller from continuing the Services or performing or complying with the Seller’s obligations under this Contract, then without prejudice to the Seller’s other rights and remedies, the Seller may suspend the Services immediately after serving on the Buyer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Seller as a result of such suspension and recommencement shall be payable by the Buyer as if they were a variation.
- 25.2 If pursuant to any right conferred by this Contract, the Seller suspends the Services and the default that led to that suspension continues unremedied subject to clause 23.1 for at least ten (10) working days, the Seller shall be entitled to terminate the Contract, in accordance with clause 23.

26. Service of Notices

- 26.1 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.
- 26.2 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.

27. Trusts

- 27.1 If the Buyer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Seller may have notice of the Trust, the Buyer covenants with the Seller as follows:
- (a) the Contract extends to all rights of indemnity which the Buyer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Buyer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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 Buyer against the Trust, the trustees and the trust fund. The Buyer 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 Buyer will not during the term of the Contract without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Buyer 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 fund or trust property.

28. General

- 28.1 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).
- 28.2 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.
- 28.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland, New Zealand.
- 28.4 Subject to the CGA, the liability of the Seller and the Buyer under this Contract shall be limited to the Price.
- 28.5 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Buyer's consent provided the assignment does not cause detriment to the Buyer.
- 28.6 The Buyer cannot licence or assign without the written approval of the Seller.
- 28.7 The Seller 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 Buyer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 28.8 The Buyer agrees that the Seller may amend their general terms and conditions for subsequent future Contracts with the Buyer by disclosing such to the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Seller to provide Goods and/or Services to the Buyer.
- 28.9 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 Buyer to make any payment due to the Seller, following cessation of a Force Majeure.
- 28.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.