

Absolutely Electrical Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Contractor" means Absolutely Electrical Limited, its successors and assigns or any person acting on behalf of and with the authority of Absolutely Electrical Limited.
 - 1.2 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.3 "Goods" means all Goods or Services supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
 - 1.4 "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable).
 - 1.5 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Contractor and the Client in accordance with clause 5 below.
2. **Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
 - 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Contractor.
 - 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 - 2.4 In the event that the Contractor is required to provide the Services urgently, 7.1 that may require the Contractor's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between the Contractor and the Client.
3. **Errors and Omissions**
 - 3.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Contractor 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 Contractor in respect of the Services.
 - 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
 - 4.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, change of trustees, or 8.1 business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
 - 5.1 At the Contractor's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Contractor to the Client; or
 - (b) the Contractor's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 5.2 The Contractor reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site and/or crawl spaces, existing state of electrical components or switchboard, non-compliant wiring, availability of machinery, safety considerations including the discovery of asbestos or synthetic mineral fibres, prerequisite work by any third party not being completed or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Contractor in the cost of labour or Goods which are beyond the Contractor's control.
 - 5.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
 - 5.4 At the Contractor's sole discretion a non-refundable deposit may be required.
 - 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
 - 5.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
 - 5.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.
 - 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to
- withhold payment of any invoice because part of that invoice is in dispute 8.7 unless the request for payment by the Contractor is a claim made under the Construction Contracts Act 2002.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Provision of the Services**
 - 6.1 Subject to clause 6.2 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably possible.
 - 6.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where 9.1 completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify the Contractor that the site is ready.
 - 6.3 At the Contractor's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
 - 6.4 The Contractor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 6.5 Any time specified by the Contractor for delivery of the Goods is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods/Services to be delivered at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Goods/Services as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
7. **Nominated Sub-Contractors**
 - 7.1 The Contractor shall engage sub-contractors, as specified in the quotation, acting solely as agent on behalf of the Client and the following shall apply:
 - (a) the Contractor shall be entitled to enter into contracts with such sub-contractors in the name of the Client; and
 - (b) the Client shall be responsible for all payments to such sub-contractors; and
 - (c) where the Contractor pays the sub-contractor's account on behalf of the Client, the Client shall reimburse the Contractor for the payment of the sub-contractor's account together with an account-handling fee within seven (7) days (unless specified otherwise) from the date of submission of the account by the Contractor to the Client; and
 - (d) if the Client does not reimburse the Contractor within seven (7) days from the date of submission of the account in accordance with sub-clause (c) above, the Contractor shall be entitled to:
 - (i) charge interest and any other fees as per clause 19.1; and/or
 - (ii) enforce any other rights the Contractor may have under clause 19.2.
 - 7.2 The Contractor does not warrant the accuracy or quality of the sub-contractor's work or warrant that their recommendations are appropriate or adequate or are fit for their purpose or that they are not given negligently. The Client agrees that they shall not make any demand on the Contractor or commence any legal proceedings against the Contractor, and the Contractor shall have no liability, whether in negligence or otherwise, to the Client in relation to any work performed by the sub-contractor.
8. **Risk**
 - 8.1 If the Contractor retains ownership of the Goods under clause 12 then:
 - (a) where the Contractor is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address);
 - (b) where the Contractor is to both supply and install Goods then the Contractor shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Goods shall immediately pass to the Client.
 - 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Contractor to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
 - 8.3 The Client warrants the plans, specifications (including CAD plans) and other information provided by the Client to the Contractor are accurate. The Client acknowledges and agrees that in the event that any plans, specifications (including CAD plans) or information provided by the Client is inaccurate:
 - (a) the Contractor accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
 - (b) the Contractor is entitled to suspend or terminate the supply of Goods or Services to the Client if there is a material change to the scope of Services as a result of inaccurate plans, specifications or other information;
 - (c) the Client shall be liable for the Contractor's costs of de-mobilisation or re-mobilisation of any plant, equipment or staff to or from the site, upon the re-commencement of the Services at the site, if applicable; and
 - (d) the Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
 - 8.4 Where the Contractor is required to install the Goods then the Client warrants that the structure of the premises or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation and Services incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
 - 8.5 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
 - 8.6 The Client acknowledges and agrees that where the Contractor has performed temporary repairs that:
 - (a) the Contractor offers no guarantee against the recurrence of the initial fault, or any further damage caused; and
 - (b) the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
9. The Client acknowledges that the Contractor is only responsible for parts that are replaced by the Contractor and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify the Contractor against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.8 Where the Client has supplied goods for the Contractor to complete the Services, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. The Contractor shall not be responsible for any defects in the goods, any loss or damage to the Services (or any part thereof), howsoever arising from the use of goods supplied by the Client. Furthermore, the Client acknowledges and accepts that should any costs associated with any failure of the goods supplied by the Client (including, but not limited to disconnection being required) shall be charged to the Client as an extra.
10. **Access**
 - 10.1 The Client shall ensure that the Contractor has clear and free access to the site at all times to enable them to undertake the Services. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
11. **Underground Locations**
 - 11.1 Prior to the Contractor commencing the Services, the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
 - 11.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
12. **Compliance with Laws**
 - 12.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
 - 12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
 - 12.3 The Client agrees that the site will comply with any WorkSafe guidelines and the Health and Safety at Work Act 2015 (the "HSW Act") relating to construction sites and any other relevant safety standards or legislation. Furthermore, the Contractor has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the HSW Act arising out of the engagement. The parties agree that for the purposes of the HSW Act, the Contractor shall not be the person who controls the place of work in terms of the HSW Act.
 - 12.4 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Contractor, then the Contractor shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.
 - 12.5 Any live works or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Contractor's live works procedures are designed to eliminate risk of injury to the Contractor's employees, damage to the Client's installations and unexpected power disconnections. There may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable and shall be invoiced in accordance with clause 5.2.
13. **Title**
 - 13.1 The Contractor and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Client has met all of its other obligations to the Contractor.
 - 13.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
 - 13.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 12.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to the Contractor on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
 - (e) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods;
 - (f) the Contractor may recover possession of any Goods in transit whether or not delivery has occurred;
 - (g) the Client 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 Contractor;
 - (h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
14. **Personal Property Securities Act 1999 ("PPSA")**
 - 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Services – that

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- have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 13.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and
 - (d) immediately advise the Contractor 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.
- 13.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 13.1 to 13.5.
- 14. Security and Charge**
- 14.1 In consideration of the Contractor agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 15. Defects**
- 15.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) the Contractor has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) the Contractor 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.
- 15.3 Subject to clause 15.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 16. Warranty**
- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
 - (c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 16.3 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Contractor to the Client.
- 18. Intellectual Property**
- 18.1 Where the Contractor has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 18.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Contractor has created for the Client.
- 19. Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 19.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20. Cancellation**
- 20.1 Without prejudice to any other rights or remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this contract within ten (10) working days of receipt by the Client of such notice/s) then the Contractor may suspend the Services immediately. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 20.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR" (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Contractor in respect of cookies where transactions for purchases/orders transpire directly from the Contractor's website. The Contractor agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of cookies, the Client shall have the right to enable / disable the cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Contractor's website.**
- 21.3 The Client authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.5 The Client shall have the right to request the Contractor for a copy of the Personal Information about the Client retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Client held by the Contractor.
- 22. Suspension of Services**
- 22.1 Where the contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) the Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and;
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 5.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Contractor suspends work, it:
- (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Contractor exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Contractor under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Contractor suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes the Contractor from continuing the Services or performing or complying with the Contractor's obligations under this contract, then without prejudice to the Contractor's other rights and remedies, the Contractor may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Contractor as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this contract, the Contractor suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, the Contractor shall be entitled to terminate the contract, in accordance with clause 20.
- 23. Service of Notices**
- 23.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by email to the other party's last known email address.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. Trusts**
- 24.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 25. General**
- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 25.3 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of the Contractor.
- 25.6 The Contractor 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 Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 25.7 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Goods to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 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.