
Taieri Technology Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Service Provider 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.
- 1.2 **"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 Client does not wish to allow Cookies to operate in the background when using the Service Provider's website, then 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 making enquiries via the website.
- 1.4 **"Goods"** means all Goods or Services supplied by the Service Provider 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).
- 1.5 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Service Provider and the Client in accordance with clause 7 below.
- 1.6 **"Service Provider"** means Taieri Technology Limited, its successors and assigns.
- 1.7 **"Support"** means to provide direct support to the Client for technical issues in relation to the Services. Support excludes the following services:
- (a) any time spent to resolve any issues with the Client's computer system created by any operator error on the part of the Client or any action of any third parties whether authorised or unauthorised by the Client;
 - (b) resolving any issues created by new third party hardware or software introduced to the Client's computer system without the Service Provider's knowledge;
 - (c) resolving any issues which are solely caused by the actions of third parties and originate outside of the Client's computer system e.g. problems that relate to the supply of services by the Client's internet service provider;
 - (d) bug fixes.

2. Interpretations

- 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; and
 - (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); and
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$), is a reference to New Zealand currency; and
 - (e) this Contract is not to be interpreted against the Service Provider 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 Client 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 Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Service Provider and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Service Provider reserves the right to refuse delivery.
- 3.6 In the event that:
- (a) the Service Provider is required to provide the Services urgently, that may require the Service Provider's staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then the Service Provider reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between the Service Provider and the Client; and
 - (b) the Goods provided by the Service Provider are subject to an insurance claim that the Client has made, then the Client agrees to honour their obligation for payment for such transactions invoiced by the Service Provider and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful or whether the Client has been paid by the insurance company or not.
- 3.7 If the Service Provider has been requested by the Client to prepare a quotation that involves multiple site visits or third party involvement, all costs (including travel and time) involved will be charged to the Client irrespective of whether or not the Services go ahead.

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- 3.8 Any advice, recommendation, information, assistance, or service provided by the Service Provider in relation Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Service Provider's own knowledge and experience and shall be accepted without liability on the part of the Service Provider. Where such advice or recommendations are not acted upon then the Service Provider shall require the Client or their agent to authorise commencement of the Services in writing. The Service Provider shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 3.9 The Client acknowledges and accepts that 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 Service Provider reserves the right to vary the Price with alternative Goods as per clause 7.2. The Service Provider also reserves the right to halt all Services until such time as the Service Provider and the Client agree to such changes. Backorders unfilled within ninety (90) days shall be cancelled.
- 3.10 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 Client agrees that should the Client introduce any third party to the Service Provider as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the services on the Client's behalf (such authority to continue until all requested services have been completed or the Client otherwise notifies the Service Provider in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Service Provider in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Service Provider for all additional costs incurred by the Service Provider (including the Service Provider's profit margin) in providing any Goods, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Errors and Omissions

- 5.1 The Client acknowledges and accepts that the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider; the Client:
- (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 Service Provider arising from the error or omission.

6. Change in Control

- 6.1 The Client shall give the Service Provider 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Service Provider as a result of the Client's failure to comply with this clause.

7. Price and Payment

- 7.1 At the Service Provider's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Service Provider to the Client; or
 - (b) the Price as at the date of Delivery of the Goods according to the Service Provider's current price list; or
 - (c) the Service Provider's estimated Price (subject to clause 7.2) which shall not be deemed binding upon the Service Provider as the actual Price can only be determined upon completion of the Services. The Service Provider undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate; or
 - (d) the Service Provider's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of twenty (20) days.
- 7.2 The Service Provider 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) if a variation to the plan of scheduled Services, or the Client's specifications is requested (including, but not limited to, limitations to accessing the site, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services such as additional defects/software or hardware incompatibilities which are found on closer inspection, safety considerations, prerequisite work by any third party not being completed, or any request to investigate and/or repair any faults or defects outside the Service Provider's normal business hours, etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases beyond the Service Provider's reasonable control in the cost of Goods or labour (including, but not limited to, third-party network operator or supplier costs, or overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges etc.).
- 7.3 Notwithstanding clause 7.2, the Client acknowledges that additional charges may apply to certain Services and support provided by the Service Provider (including, but not limited to, telephone support and advice). Any such charges shall be shown as a variation to the original Price.
- 7.4 Variations will be charged for on the basis of the Service Provider's quotation, and will be detailed in writing, and shown as variations on the Service Provider's invoice. The Client shall be required to respond to any variation submitted by the Service Provider within ten (10) working days. Failure to do so will entitle the Service Provider 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.

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- 7.5 At the Service Provider's sole discretion, a reasonable deposit may be required.
- 7.6 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 Service Provider, which may be:
- (a) on delivery of the Goods; or
 - (b) on completion of the Services;
 - (c) by way of instalments/progress payments in accordance with the Service Provider's payment schedule;
 - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted or emailed to the Client'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 Client by the Service Provider.
- 7.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Service Provider.
- 7.8 The Service Provider may in its discretion allocate any payment received from the Client towards any invoice that the Service Provider determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Service Provider may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Service Provider, payment will be deemed to be allocated in such manner as preserves the maximum value of the Service Provider's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.9 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 Service Provider nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Service Provider an amount equal to any GST the Service Provider must pay for any supply by the Service Provider 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.
- 8. Provision of the Services**
- 8.1 Subject to clause 8.2 it is the Service Provider's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Service Provider claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Service Provider'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 Service Provider that the site is ready.
- 8.3 When the Client uses the Service Provider's support Services, the Client must:
- (a) ensure that the Service Provider at all times is granted all necessary licences, permissions and access reasonably required by the Service Provider to perform the support including without limitation:
 - (i) physical access to any relevant premises and hardware;
 - (ii) logon and password access to any relevant computer systems; and
 - (iii) remote online access to any relevant computer systems where available.
- 8.4 Delivery ("**Delivery**") of the Goods is taken to occur at the time that the Service Provider (or the Service Provider's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.5 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 8.6 The Service Provider 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.
- 8.7 Any time specified by the Service Provider for Delivery of the Goods is an estimate only and the Service Provider 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 to be delivered at the time and place as was arranged between both parties. In the event that the Service Provider is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Service Provider shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9. Product Specifications**
- 9.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Service Provider's or manufacturer's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information;
 - (b) while the Service Provider may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Service Provider has given these in good faith, and are estimates based on optimal operating conditions.
- 10. Risk**
- 10.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client 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 Client, the Service Provider is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Service Provider is sufficient evidence of the Service Provider's rights to receive the insurance proceeds without the need for any person dealing with the Service Provider to make further enquiries.
- 10.3 If the Client requests the Service Provider to leave Goods outside the Service Provider's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 10.4 Where the Service Provider is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Service Provider

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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.

- 10.5 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Service Provider immediately upon any proposed changes. The Client agrees to indemnify the Service Provider against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 7.2.
- 10.6 The Client accepts that security systems, smoke, heat and like detectors installed to / at their premises:
- (a) are for monitoring and detection purposes and should not be seen as a life saving device; and
 - (b) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.
- 10.7 It shall be the Client's responsibility:
- (a) to ensure the security system equipment is tested and maintained to full operational condition; and
 - (b) for all phone calls emanating from the security system panel; and
 - (c) to ensure all protected areas are free from obstacles which may impair the operation of the system.
- 10.8 The Client acknowledges and accepts that:
- (a) where the Service Provider has performed temporary repairs that:
 - (i) the Service Provider offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) the Service Provider will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required;
 - (b) the Service Provider:
 - (i) is only responsible for components that are replaced by the Service Provider and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
 - (ii) shall not be responsible or liable for any defect in other appliances or power points as a coincidence of the Service Provider installing the Goods,
 - (c) any defects in the Goods or appearing in the Services after completion due to the Client or any third party using any items that overloads the structure or system to which the Service Provider's Goods are installed or connected to, or by workmanship not performed by the Service Provider, shall not be covered by any applicable warranty pertaining to the Goods.
- 10.9 The Service Provider accepts no liability for any damage either direct or consequential resulting from changes made by parties other than the Service Provider to connected systems or to infrastructure on which installed equipment and/or services are operated on or with phone lines or networks, that effect the operation of installed equipment or services.
- 10.10 The Client acknowledges and agrees that:
- (a) the Service Provider does not guarantee the performance or transmission speed or quality of any data;
 - (b) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or networks by third parties; and
 - (c) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such the Service Provider cannot warrant against delays or errors in transmitting data between the Client and any person or entity the Client conducts communications with including orders, and the Client agrees that the Service Provider will not be liable for any losses which the Client suffers as a result of delays or errors in transmitting orders or other communications and/or documents.
- 10.11 The Client will use any third-party software supplied by the Service Provider, and identified as such, strictly in terms of the licence under which it is supplied.
- 10.12 All third-party software and/or hosting services is provided at the Client's own risk and is not in any way warranted by the Service Provider, nor shall the Service Provider be in any way responsible for the implementation or effects of any "patches", "updates", or "fixes" offered by the manufacturer of the software. Further, the Client agrees to indemnify the Service Provider against all consequential loss arising out of any defect or failure in products (including delivery time-lags), hosting services or software supplied by any third party.
- 10.13 Where the Service Provider has not provided the Client with a back up service and is not in the contracted service, the Service Provider shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to, software programmes) resulting from the Services provided by the Service Provider. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to the Service Provider providing the Services. The Client accepts full responsibility for the Client's software and data and the Service Provider is not required to advise or remind the Client of appropriate backup procedures.
- 10.14 It is the responsibility of the Client to routinely check that systems and equipment are operational and free from fault in the event of power outages, surges, electrical storms and the temporary disconnection of connected communication lines and networks.

11. Access

- 11.1 The Client shall ensure that:
- (a) the Service Provider has clear and free access to the installation site at all times to enable them to undertake the installation. The Service Provider shall not be liable for any loss or damage to the site unless due to the negligence of the Service Provider;
 - (b) they fully disclose any information that may affect the Service Provider's installation procedures;
 - (c) they make the premises available on the agreed date and time including providing the Service Provider any plant, materials and services. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Service Provider and the Client, any additional costs will be invoiced to the Client as an extra;
 - (d) it is the Client's responsibility to provide the Service Provider, while at the site, with adequate access to available water, electricity, toilet and washing facilities (where applicable); and
 - (e) where the Service Provider requires that materials, equipment, plant, and tools etc. required for the Services be stored at the site, the Client shall supply the Service Provider a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

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- 11.2 The Service Provider reserves the right to refuse to enter the site to undertake the Services in the event that the Service Provider believes the site to be unsafe. In this event, the Client agrees that it is their responsibility to ensure the site is made safe before the Service Provider will enter the site, the Service Provider shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
- 12. Underground Locations**
- 12.1 Prior to the Service Provider commencing any work the Client must advise the Service Provider 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.
- 12.2 Whilst the Service Provider will take all care to avoid damage to any underground services the Client agrees to indemnify the Service Provider 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. Compliance with Laws**
- 13.1 The Client and the Service Provider 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.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client or the Client's representative has supplied information, components, parts or products to be used in the installation or configuration of a system for the Service Provider to complete the Services, the Client 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 Service Provider's opinion, it is believed that the materials supplied are non-conforming products and will not conform with New Zealand regulations, then the Service Provider 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 or rectifying any errors will be invoiced in accordance with clause 7.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.5 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Service Provider 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 Client who has engaged a third party head contractor.
- 14. Microsoft Subscription Licensing**
- 14.1 All subscriptions are subject to Microsoft terms and conditions. The Client approves the Service Provider to agree to these terms and conditions on their behalf.
- 14.2 All subscription prices are subject to any Microsoft increase.
- 14.3 The commencement date shall be the date of the first delivery of the Services, or from the date of signing, whichever, is the earlier. Fixed price agreements shall be for the period of twelve (12), twenty four (24) or thirty-six (36) months as agreed between the parties.
- 14.4 All subscriptions are for a twelve (12) month period regardless of payment term (unless otherwise stated). Cancellation of subscription prior to twelve (12) months with any outstanding payments for the remainder of the subscription period will be due at the time of cancellation.
- 14.5 All subscriptions will automatically renew unless the Service Provider is notified by the Client within thirty (30) days of the subscription expiry date.
- 15. Backup Devices and Plans**
- 15.1 Backup device commitment terms are stipulated on the Client's quote and tax invoice. The Client commits to this term upon signing the quote. Cancellation prior to the committed term end date requires full payment for the remainder of the commitment term and is due at the time of cancellation.
- 15.2 Backup device term start date is the day the device is plugged into the Client's network or sixty (60) days from accepting the quote, whichever is first is the start term date.
- 15.3 Backup plans are stipulated on the Client tax invoice.
- 16. Title**
- 16.1 The Service Provider and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Service Provider all amounts owing to the Service Provider; and
 - (b) the Client has met all of its other obligations to the Service Provider.
- 16.2 Receipt by the Service Provider of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 16.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 16.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Service Provider on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Service Provider and must pay to the Service Provider 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 Service Provider and must pay or deliver the proceeds to the Service Provider on demand;

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- (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 Service Provider and must sell, dispose of or return the resulting product to the Service Provider as it so directs;
- (e) the Client irrevocably authorises the Service Provider to enter any premises where the Service Provider believes the Goods are kept and recover possession of the Goods;
- (f) the Service Provider 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 Service Provider; and
- (h) the Service Provider may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

17. Personal Property Securities Act 1999 (“PPSA”)

- 17.1 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 that have previously been supplied and that will be supplied in the future by the Service Provider to the Client, and the proceeds from such Goods as listed by the Service Provider to the Client in invoices rendered from time to time.
- 17.2 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 Service Provider 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 Service Provider 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 Service Provider; and
 - (d) immediately advise the Service Provider 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.
- 17.3 Unless otherwise agreed to in writing by the Service Provider, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.4 The Client shall unconditionally ratify any actions taken by the Service Provider under clauses 17.1 to 17.3.
- 17.5 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

18. Security and Charge

- 18.1 In consideration of the Service Provider 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, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 18.2 The Client indemnifies the Service Provider from and against all the Service Provider's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Service Provider's rights under this clause.
- 18.3 The Client irrevocably appoints the Service Provider and each director of the Service Provider as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Client's behalf.

19. Defects

- 19.1 The Client shall inspect the Goods on Delivery and shall within five (5) days of Delivery (time being of the essence) notify the Service Provider of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Service Provider 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 fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Service Provider has agreed in writing that the Client is entitled to reject, the Service Provider's liability is limited to either (at the Service Provider's discretion) replacing the Goods or repairing the Goods.
- 19.2 Goods will not be accepted for return other than in accordance with 19.1 above, and provided that:
 - (a) the Service Provider has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within ten (10) days of the Delivery date; and
 - (c) the Service Provider 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.
- 19.3 If the Service Provider accepts that the Client is entitled to reject the Goods following their return pursuant to clause 19.2(b) the Service Provider will reimburse the Client's actual and reasonable costs of return Delivery.
- 19.4 The Service Provider may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 19.5 Subject to clause 19.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

20. Warranty

- 20.1 Subject to the conditions of warranty set out in clause 20.2 the Service Provider warrants that if any workmanship provided by the Service Provider becomes apparent and is reported to the Service Provider within ninety (90) days of the date of Delivery and within three (3) days for

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any defective Goods manufactured by the Service Provider (time being of the essence) then the Service Provider will either (at the Service Provider's sole discretion) replace or remedy the defect.

- 20.2 The conditions applicable to the warranty given by clause 20.1 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 serviced item; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Service Provider; 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 Service Provider shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without the Service Provider's consent.
 - (c) in respect of all claims the Service Provider shall not be liable to compensate the Client for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Client's claim.
- 20.3 In accordance with clause 20.1 and 20.2, where the Service Provider is to repair the defect, any such repair shall be done at a place the Service Provider may specify. The Client shall be responsible for cartage or Delivery as may be necessary.
- 20.4 For Goods not manufactured by the Service Provider, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Service Provider 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.
- 20.5 In the event that the manufacturer's Goods are deemed to be faulty, the Service Provider reserves the right to halt the commencement for re-installation of replacement Goods until such time as it is agreed between all parties the person/s that will be liable for all associated expenses with the re-installation of the Goods.

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

- 21.1 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 ("CGA") do not apply to the supply of Goods by the Service Provider to the Client.
- 21.2 The Service Provider agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

22. Intellectual Property

- 22.1 Where the Service Provider 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 Service Provider. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Service Provider.
- 22.2 The Client warrants that all designs, specifications or instructions given to the Service Provider will not cause the Service Provider to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Service Provider against any action taken by a third party against the Service Provider in respect of any such infringement.
- 22.3 The Client agrees that the Service Provider may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Service Provider has created for the Client.

23. Default and Consequences of Default

- 23.1 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 Service Provider's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 23.2 If the Client owes the Service Provider any money the Client shall indemnify the Service Provider from and against all costs and disbursements incurred by the Service Provider in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Service Provider's collection agency costs, and bank dishonour fees).
- 23.3 Further to any other rights or remedies the Service Provider may have under this Contract, if a Client has made payment to the Service Provider, 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 Service Provider under this clause 23 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.
- 23.4 Without prejudice to the Service Provider's other remedies at law the Service Provider shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Service Provider shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Service Provider becomes overdue, or in the Service Provider'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 Service Provider;
 - (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.

24. Cancellation

- 24.1 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.
- 24.2 If the Service Provider, due to reasons beyond the Service Provider's reasonable control, is unable to deliver any Goods and/or Services to the Client, the Service Provider 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 Client. On giving such notice the Service

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Provider shall repay to the Client any money paid by the Client for the Goods and/or Services. The Service Provider shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 24.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.
- 24.4 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.

25. Privacy Policy

25.1 All emails, documents, images or other recorded information held or used by the Service Provider is "Personal Information" as defined and referred to in clause 25.3 and therefore considered confidential. The Service Provider 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 Service Provider acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Service Provider that may result in serious harm to the Client, the Service Provider will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.

25.2 Notwithstanding clause 25.1, privacy limitations will extend to the Service Provider in respect of Cookies where the Client utilises the Service Provider's website to make enquiries. The Service Provider 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 Service Provider when the Service Provider sends an email to the Client, so the Service Provider may collect and review that information ("collectively Personal Information").

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

25.3 The Client authorises the Service Provider or the Service Provider'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 Service Provider from the Client directly or obtained by the Service Provider 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.

25.4 Where the Client is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 2020.

25.5 The Client shall have the right to request (by e-mail) from the Service Provider, a copy of the Personal Information about the Client retained by the Service Provider and the right to request that the Service Provider correct any incorrect Personal Information.

25.6 The Service Provider will destroy Personal Information upon the Client'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.

25.7 The Client can make a privacy complaint by contacting the Service Provider via e-mail. The Service Provider 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

26. Confidentiality

26.1 Subject to clause 26.2, each party agrees to treat as confidential the other party's confidential information, and agree not to divulge it to any third party, without the other party's written consent.

26.2 Both parties agree to:

- (a) use the confidential information of the other party only to the extent required for the purpose it was provided;
- (b) not copy or reproduce any of the confidential information of the other party in any way;
- (c) only disclose the other party's confidential information to:
 - (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential;
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (iii) not disclose the other party's confidential information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.

26.3 Either party must promptly return or destroy all confidential information of the other party in its possession or control at the other party's request unless required by law to retain it.

26.4 confidential information excludes information:

- (a) generally available in the public domain (without unauthorised disclosure under this Contract);
- (b) received from a third party entitled to disclose it;
- (c) that is independently developed.

27. Suspension of Services

27.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:

- (a) the Service Provider 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:

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- (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 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 Service Provider by a particular date;
 - (iv) the Service Provider has given written notice to the Client of its intention to suspend the carrying out of work under the construction Contract.
- (b) if the Service Provider suspends work, it:
- (i) is not in breach of Contract;
 - (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;
 - (iii) is entitled to an extension of time to complete the Contract;
 - (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 Service Provider 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 Service Provider under the Contract and Commercial Law Act 2017;
 - (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 Service Provider suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes the Service Provider from continuing the Services or performing or complying with the Service Provider's obligations under this Contract, then without prejudice to the Service Provider's other rights and remedies, the Service Provider 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 Service Provider as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 27.2 If pursuant to any right conferred by this Contract, the Service Provider suspends the Services and the default that led to that suspension continues un-remedied subject to clause 24.1 for at least ten (10) working days, the Service Provider shall be entitled to terminate the Contract, in accordance with clause 24.

28. Service of Notices

- 28.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

29. Trusts

- 29.1 If the Client 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 Service Provider may have notice of the Trust, the Client covenants with the Service Provider as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client 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 Client against the Trust, the trustees and 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 during the term of the Contract without consent in writing of the Service Provider (the Service Provider 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 fund or trust property.

30. General

- 30.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 30.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 30.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Dunedin, New Zealand.
- 30.4 Subject to the CGA, the liability of the Service Provider and the Client under this Contract shall be limited to the Price.
- 30.5 The Service Provider may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.

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- 30.6 The Client cannot licence or assign without the written approval of the Service Provider.
- 30.7 The Service Provider 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 Service Provider's sub-contractors without the authority of the Service Provider.
- 30.8 The Client agrees that the Service Provider 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 Service Provider to provide Goods and/or Services to the Client.
- 30.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make any payment due to the Service Provider, following cessation of a Force Majeure.
- 30.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.