

Terms & Conditions of Trade

Fortura Limited

1. DEFINITIONS

- 1.1 “Contract” means the terms and conditions contained herein, together with any price, order, invoice or other document or amendments expressed to be supplemental to this contract.
- 1.2 “Seller” means fortura limited (or otherwise referred to as the “vendor”), its successors and assigns or any person acting on behalf of and with the authority of fortura limited.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the customer requesting the seller to provide the goods as specified in any proposal, price, order, invoice or other documentation, and:
 - (A) If there is more than one customer, is a reference to each customer jointly and severally; and
 - (B) If the customer is a partnership, it shall bind each partner jointly and severally; and
 - (C) If the customer is a part of a trust, shall be bound in their capacity as a trustee; and (d) includes the customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all goods, or services, supplied by the seller to the customer supplied by the seller to the customer at the customer’s request from time to time (where the context so permits the terms “goods” or “services” shall be interchangeable for the other).
- 1.5 “Cookies” means small files which are stored on a user’s electronic device. They are designed to hold modest amount of data (including pii) specific to a particular customer and website and can be accessed either by the web server or the customer’s electronic device. If the customer does not wish to allow cookies to operate in the background when ordering from the website, then the customer shall have the right to enable/disable the cookies first by selecting the option to enable/disable provided on the website, prior to ordering goods via the website.
- 1.6 “Price” means the price payable (plus any goods and services tax (“gst”) where applicable) for the goods as agreed between the seller and the customer in accordance with clause 6 below.

2. ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a Customer Information Form with the Seller, and it has been approved with a credit limit established for the account, if required.

- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse acceptance for new orders or refuse delivery of the Goods.
- 2.6 In the event that the Goods provided by the Seller are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by the Seller and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.7 Where the Seller gives any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods supplied is given in good faith and is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.9 In the event that the Seller is required to provide the Goods urgently, that may result in the Seller to work outside normal business hours (including, but, not limited to working through lunch breaks, weekends and/or Public Holidays) or incur travel or accommodation costs, then the Seller reserves the right to charge the Customer the additional costs unless otherwise agreed between the Seller and the Customer.
- 2.10 The Seller will ensure that the flooring is made safer and reduce the risk of slips or falls in accordance with New Zealand Safety Standards. The Customer acknowledges that the Seller shall not be held liable whatsoever for any falls or slips that may occur, either prior or following the application of any surface treatment.
- 2.11 The supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases the Seller will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Services on hold, as per clause 7 until such time as the Seller and the Customer agree to such changes.

3. ERRORS AND OMISSIONS

- 3.1 The Customer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Goods.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of the Seller; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice shall be subject to correction.

4. AUTHORISED REPRESENTATIVES

- 4.1 The Customer acknowledges that the Seller shall (for the duration of the Goods) liaise directly with one (1) authorised representative, and that once introduced as such to the Seller, that person shall have the full authority of the Customer to order any Goods, and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Goods, or variation/s requested thereto by the Customer's duly authorised representative.

- 4.2 If the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Goods, or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. CHANGE IN CONTROL

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

6. PRICE AND PAYMENT

- 6.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Seller to the Customer in respect of Goods performed or Goods supplied; or
 - (b) the Seller's quoted Price (subject to clause 6.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's Price in writing within thirty (30) days unless specifically quoted otherwise, within the quotation.
- 6.2 The Seller reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Goods originally scheduled is requested; or
 - (c) in the event of increases to the Seller in the cost of labour or materials (including but, not limited to any variation as a result of fluctuations in currency exchange rates or increases to the Seller in the cost of taxes, levies, freight or insurance charges, or delays in shipment, wholesale supply rates etc) which are beyond the Seller's control.
- 6.3 Variations will be charged for on the basis of the Seller's Price, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Seller's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
- (a) on delivery of the Goods; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) for certain approved Customers, due twenty (20) days following the end of the month in which an invoice is sent to the Customer's address or address for notices; or
 - (d) immediately payable at the time the Customer places an order for any non-stock list item or bespoke Goods that the Seller have to pay to any third-party supplier.
- 6.6 Payment may be made by electronic/on-line banking or credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Customer and the Seller.

- 6.7 The Seller may in its discretion allocate any payment received from the Customer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. DELIVERY OF THE GOODS

- 7.1 At the Seller's sole discretion, delivery of the Goods shall take place when the Goods are supplied to the Customer at the Customer's nominated address, even if the Customer is not present at the address or when the Customer or the Customer's nominated carrier takes possession of the Goods at the Seller's address.
- 7.2 At the Seller's sole discretion the cost of delivery is added to the cost Price of the Goods.
- 7.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.
- 7.4 the Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Customer as a result of delivery being delayed for any reason. However, both parties agree that they shall make every endeavour to enable the Goods to be supplied at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Seller shall be entitled to charge a reasonable fee for re supplying the Goods at a later time and date, and/or for storage of the Goods.

8. DIMENSIONS, PLANS AND SPECIFICATIONS

- 8.1 the Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 Where the Customer is to supply the Seller with any design specifications the Customer shall be responsible for providing accurate data. the Seller shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.
- 8.3 In the event the Customer gives information relating to measurements and quantities of Goods required in completing the Goods, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or the Seller places an order based on these measurements and quantities. the Seller accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

9. RISK

- 9.1 If the Seller retains ownership of the Goods under clause 13 then where the Seller is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer 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 Seller or the Seller's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).

- 9.2 Notwithstanding the provisions of clause 9.1 if the Customer specifically requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Customer and it shall be the Customer'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 Customer's expense.
- 9.3 Extreme instances of weather, temperature or forecast weather, may cause delay to the Seller being able to deliver the Goods, the Seller accepts no losses, damages or costs as a result of this instance.
- 9.4 The Customer acknowledges that the Goods supplied, may cause variations in texture, shade, tone, colour, surface, finish and may fade or change colour if tiles are aged or of a certain type. Whilst the Seller will make every effort to minimise such variations and will offer guidance to the Customer, the Seller will not be held liable in any way whatsoever, should such variations occur.
- 9.5 The Customer acknowledges that the Goods when applied, may require as additional application in time as the effectiveness of the application may diminish over time.
- 9.6 The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in the Seller's or the manufacturers fact sheets, Price lists or advertising material are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use does not constitute a sale by description and does not form part of the Contract, unless expressly stated as such in writing by the Seller.
- 9.7 The Customer acknowledges that when applying the Goods, the Customer must follow all manufacturer instructions including utilising Personal Protective Equipment (PPE) during the application process. If these instructions are not complied with, the Seller will not be held liable in any way whatsoever.
- 9.8 Where the Seller has effected delivery, all risk passes to the Customer as per clause 9.1 and the Customer claims the Goods have been stolen, it shall be the Customer's responsibility to contact the police, and shall not excuse the Customer from fulfilling their financial obligations under this Contract.

10. ON-LINE ORDERING

- 10.1 The Customer acknowledges and agrees that:
- 10.2 the Seller does not guarantee the website's performance; and
- 10.3 display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Seller; and
- 10.4 on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
- 10.5 there are inherent hazards in electronic distribution, and as such the Seller cannot warrant against delays or errors in transmitting data between the Customer and the Seller including orders, and you agree that to the maximum extent permitted by law, the Seller will not be liable for any losses which the Customer suffers as a result of online ordering not being available or for delays or errors in transmitting orders; and
- 10.6 when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
- 10.7 if the Customer is not the cardholder for any credit card being used to pay for the Goods, the Seller shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 10.8 The Seller reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Seller's business, or violated these terms and conditions.

11. INSURANCE AND LIABILITY

- 11.1 The Seller shall have public liability insurance of at least two (2) million dollars, it is the Customer's responsibility to ensure that they are similarly insured.
- 11.2 In the event of any breach of this Contract by the Seller, the remedies of the Customer shall be limited to damages. Under no circumstance shall the liability of the Seller exceed the cost of Goods supplied.
- 11.3 While the Seller provides the Goods in good faith and to the best of its ability, the Seller is not liable for any costs, damages or loss suffered by the Customer as a result of omissions or inaccuracies in the information provided. The Customer accepts the Seller's Services on the basis that to the maximum extent permitted by law, any liability of the Seller for the Services provided under the Contract is hereby excluded. This is regardless of whether such liability arises in contract, tort (including negligence), consequential loss, equity, breach of statutory duty or otherwise.

12. COMPLIANCE WITH LAWS

- 12.1 The Customer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods including any relating Worksafe health and safety laws or any other relevant safety standards or legislation pertaining to the Goods.
- 12.2 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Seller agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Customer who has engaged a third party namely the Seller.

13. TITLE

- 13.1 the Seller and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Seller all amounts owing to the Seller; and (b) the Customer has met all of its other obligations to the Seller.
- 13.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to the Seller on request; and
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
 - (c) the production of these terms and conditions by the Seller shall be sufficient evidence of the Seller's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Seller to make further enquiries; and
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand; and
 - (e) the Customer should not convert or process the Goods or intermix them with other Goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs; and
 - (f) unless the Goods have become fixtures the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods; and

- (g) the Seller may recover possession of any Goods in transit whether or not delivery has occurred; and
- (h) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller; and
- (i) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer. 14. Personal Property Securities Act 1999 ("PPSA")

14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all present or after acquired Goods and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Goods that have previously been supplied and that will be supplied in the future by the Seller to the Customer.

14.2 The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:

- (a) for all Goods previously supplied by the Vendor to the Customer (if any); and
- (b) for all of its present and after acquired Goods; and
- (c) for intellectual property arising out of or in connection with the Services.

14.3 The Customer agrees to grant a "Purchase Money Security Interest" to the Vendor in respect to all amounts owed by the Customer to the Vendor, as that term is defined in the PPSA.

14.4 Where Goods in respect of which title has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA:

- (a) Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale; and
- (b) Where any payments are made from the Customer's bank account otherwise than to the Seller payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor; and
- (c) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Customer.

14.5 The Customer undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; and
- (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 Seller; and
- (d) immediately advise the Seller of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

14.6 the Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

14.7 If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.

14.8 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

14.9 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14.10 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 14.1 to 14.9.

15. SECURITY AND CHARGE

15.1 In consideration of the Seller agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

15.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Seller's rights under this clause.

15.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. DEFECTS

16.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:

- (a) the Seller have agreed in writing to accept the return of the Goods; and (b) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner.

17. RETURNS

17.1 The Seller has no obligation to accept the return of Goods for credit and specifically manufactured Goods will absolutely not be returned for credit whatsoever unless meeting criteria contained in clause 16.1.

17.2 the Seller may (at its sole discretion) accept the return of Goods for credit but this may incur a handling fee of twenty five percent (25%) of the returned Goods plus any freight charges.

17.3 If the Goods show signs of use, in the opinion of the Seller, those Goods will not be eligible for return whatsoever.

18. WARRANTIES

18.1 Subject to the conditions of warranty set out in clause 18.2 the Seller warrants that if any defect in the performance of Goods supplied becomes apparent and is reported to the Seller within five (5) years of the date of delivery, then the Seller will either (at the Seller's sole discretion) replace or remedy the performance of Goods supplied.

18.2 The conditions applicable to the warranty given by clause 18.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Materials; or
 - (ii) degradation of the surface to which the treatment has been applied; or
 - (iii) failure on the part of the Customer to follow any instructions or guidelines provided by the Seller or the Manufacturer; or
 - (iv) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (v) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (vi) fair wear and tear, any accident or act of God (see clause 27.9); or
 - (vii) that the Goods are applied by an approved and licenced applicator and that the Customer has obtained due and proper certification from the applicator, if this is not in place the warranty referred to in

18.1 defaults to a one (1) year warranty period only

- (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent; or
- (c) in respect of all claims the Seller shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

18.3 The Seller will provide to the Customer cleaning and maintenance guidelines that will advise of the due care and maintenance processes required as soon as possession of the Works is taken by the Customer. Failure to adhere to the cleaning and maintenance guidelines may invalidate the conditions of this warranty.

18.4 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. the Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

19. CONSUMER GUARANTEES ACT 1993

19.1 The Customer agrees that if they are acquiring Goods for the purposes of a business (as that term is defined in the CGA), to the extent permitted by law the provisions of the CGA will not apply to the supply of Goods by the Seller to the Customer.

20. INTELLECTUAL PROPERTY

20.1 Where the Seller has designed, drawn, written plans or a schedule of Goods, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.

20.2 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

20.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Seller has created for the Customer.

21. OVERDUE PAYMENTS

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Seller's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Seller may have under this Contract, if a Customer has made payment to the Seller, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 21.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due; or
 - (b) the Customer has exceeded any applicable credit limit provided by the Seller; or
 - (c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

22. CANCELLATION

- 22.1 Without prejudice to any other rights or remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice/s) then the Seller may suspend the Goods immediately. the Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 22.2 the Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are commenced by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Seller for Goods already performed. the Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Customer cancels the delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

23. PRIVACY POLICY

- 23.1 All emails, documents, images or other recorded information including Personally Identifiable Information (PII) as defined and referred to in clause 23.4 held or used by the Seller is considered confidential. the Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of PII pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 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 Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers PII, held by the Seller that may result in serious harm to the Customer, the Seller will notify the Customer in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Seller in respect of Cookies where transactions for purchases/orders transpire directly from the Seller's website. the Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection the Customers Personal Information such as:
- (a) IP address, browser, email Customer type and other similar details; and
 - (b) tracking website usage and traffic; and
 - (c) reports which are available to the Seller when the Seller sends an email to the Customer; so the Seller may collect and review that information (collectively "PII")
- 23.3 If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Customer may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.4 The Customer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (e.g. email, Facebook or Twitter details), or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 23.5 Where the Customer is an individual the authorities under clause 23.4 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.6 The Customer shall have the right to request the Seller for a copy of the PII about the Customer retained by the Seller and the right to request the Seller to correct any incorrect PII about the Customer held by the Seller.

24. SERVICE OF NOTICES

- 24.1 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; or
 - (b) by leaving it at the address of the other party as stated in this Contract; or (c) by sending it by registered post to the address of the other party as stated in this Contract; or (d) if sent by email to the other party's last known email address.
- 24.2 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.

25. SUSPENSION OF WORKS

25.1 Where the Contract is subject to the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:

- (a) the Seller has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments; or new legislation and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Seller by a particular date; and
 - (iv) the Seller has given written notice to the Customer of its intention to suspend the carrying out of construction work under the Construction Contract.
- (b) if the Seller suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Seller exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Seller under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Seller suspending work under this provision;
- (d) due to any act or omission by the Customer, the Customer effectively precludes the Seller from continuing the Works or performing or complying with the Seller's obligations under this Contract, then without prejudice to the Seller's other rights and remedies, the Seller may suspend the Works immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by the Seller as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.

25.2 If pursuant to any right conferred by this Contract, the Seller suspends the Works and the default that led to that suspension continues un-remedied subject to clause 25.1 for at least ten (10) working days, the Seller shall be entitled to terminate the Contract, in accordance with clause 22.

26. TRUSTS

26.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee

of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Customer covenants with the Seller as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the Trust fund; and
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and
- (c) the Customer will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust; or
 - (ii) any alteration to or variation of the terms of the Trust; or (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the Trust property.

27. GENERAL

- 27.1 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).
- 27.2 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.
- 27.3 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 Auckland courts of New Zealand.
- 27.4 the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.5 the Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.6 The Customer cannot licence or assign without the written approval of the Seller.
- 27.7 The Seller may elect to subcontract out any part of the Goods but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 27.8 The Customer agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Goods to the Customer.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 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.