

Impact Roofing & Plumbing Limited – Terms & Conditions of Trade

1.	Definitions	6.3	Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.		
1.1	"Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works 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.	6.4	At the Contractor's sole discretion, a reasonable deposit may be required.		
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.	6.5	Time for payment of the Works being of the essence, the Price will be payable by the Client on the dates determined by the Contractor, which may be: (a) on completion of the Works; (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;	(e)	the Client agrees to indemnify the Contractor against any loss or damage to the Works, or caused thereby, or any part thereof however arising; no persons other than those authorised or employed by the Contractor are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. The Contractor shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause;
1.3	"Contractor" means Impact Roofing & Plumbing Limited, its successors and assigns.	6.6	(d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.	(f)	the Contractor accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks;
1.4	"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 Contractor'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.	6.7	Payment may be made by electronic/on-line banking or by any other method as agreed to between the Client and the Contractor.	(g)	it is their responsibility to ensure that any uncompleted areas are kept watertight during construction if there is any delay in the Contractor (including, but not limited to, waiting on another trade, materials, or weather conditions). The Contractor will accept no liability whatsoever for any damages caused as a result of the Client's failure to comply with this clause;
1.5	"Intended Use" means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.	6.8	The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocated by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSPA) in the Materials.	(h)	choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, the Contractor cannot give any guarantee against recurrence or further damage to the drain line. The Contractor requests the Contractor to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and the Contractor does not recommend the use of such equipment due to the risk of the equipment being logged or stuck, the Contractor may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes logged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment;
1.6	"Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building: (a) the product is not, or will not be, safe; or (b) does not, or will not, comply with the relevant regulatory provisions; or (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.	6.9	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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Contractor is a claim made under the Construction Contracts Act 2003. Nothing in this clause 6.9 prevents the Client from the ability to dispute any invoice.	(i)	in the event that either the Contractor is required to remove the Sky Dish prior to the commencement of the Works, or the Client requests the Contractor to remove the Sky Dish prior to replacing the roof and upon completion of the Works re-install the Sky Dish, it shall be the Client's responsibility to arrange for a technician to ensure that the Sky Dish has been adequately secured to the satellite for optimum viewing where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims or drainage components used due to the difference in metal alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Materials; and
1.7	"Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between the Contractor and the Client in accordance with the Terms and Conditions of Trade.	6.10	Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. 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 GST on any other supply of goods or services. The Client must pay any GST applicable in addition to the Price except where they are expressly included in the Price.	(j)	Materials (including but not limited to timber, steel, roofing/cladding, etc.) supplied must: (i) exhibit variations in shade, colour, texture, surface, markings, finish, and may contain natural fissures, occlusions, lines, indentations. The Contractor will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
1.8	"Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).	7.	Provision of the Works	(k)	Material or discolour as a result of exposure to heat, cold, or weather;
1.9	"Worksite" means the address nominated by the Client to which the Works and/or Materials are to be supplied by the Contractor.	7.1	Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.	(l)	mark or stain if exposed to certain substances;
2.	Acceptance	7.2	The Contractor shall be responsible to ensure that the Works are completed in accordance with the Terms and Conditions of Trade.	(m)	be damaged or disfigured by impact or scratching; and
2.1	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 any Works.	7.3	The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	(n)	create undesirable smells caused by a system as a result of its normal operation.
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.	7.4	Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to deliver the Works on time and to the satisfaction of both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.		
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.	8.	Dimensions, Plans and Specifications		
2.4	The Client acknowledges and accepts that the supply of: (a) Works on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery; and (b) Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases the Contractor will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Works on hold, as per clause 7.2 until such time as the Contractor and the Client agree to such changes.	8.1	The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.	10.	Worksite Access and Condition
2.5	Any advice, recommendation, information, assistance or service provided by the Contractor in relation to the Works is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor (including, but not limited to, recommendations in relation to the suitability of the Materials not being adhered to (such as, pitch, depth, size, insulation requirements and environmental location etc)). Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.	8.2	In the event the Client gives information relating to measurements and quantities of Materials required in completing the Works, it is the Client's responsibility to verify the accuracy of the Client's measurements and quantities. The Contractor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.	10.1	The Contractor is not responsible for the removal of rubbish or residual scarp from or clean-up of the building/construction Worksite/s. All residual scarp or rubbish generated by the Contractor will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed. If the Contractor is required to remove the rubbish or scarp, an extra charge will apply. Any useable materials, which are not reused in the contract, the Contractor shall retain the Works and removed by the Contractor, will become the Contractor's property.
2.6	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.	9.	Risk	10.2	The Client acknowledges and accepts that under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous materials) is discovered on the Worksite: (a) the Contractor shall suspend the Works; (b) the Client shall be fully responsible for the resolution of any resulting problems; (c) any additional cost incurred by the Contractor shall be added to the Price under clause 6.2.
3.	Authorised Representatives	9.1	If the Contractor retains ownership of the Materials under clause 13 then: (a) where the Contractor is supplying Materials only, all risk for the Materials shall be immediately passed to the Client on delivery and the Client must ensure the Materials or before delivery. The cost of delivery is either included in the Price or is in addition to the Price as agreed between the parties. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at that address); (b) where the Contractor is supplying Materials and the replacement of Materials then the Contractor shall maintain a both supply and install policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.	10.3	It is the intention of the Contractor and agreed by the Client that: (a) it is the responsibility of the Client to provide and have erected scaffolding to enable the Works to be undertaken (where in the Contractor's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any persons erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed;
3.1	Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to the Contractor as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials, Works, and/or to request any variation thereto, on the Client's behalf, and such authority to continue until all orders have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client's duly authorised representative.	9.2	Notwithstanding the provisions of clause 9.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location, the Contractor shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.	10.4	The Client agrees to be present at the Worksite when and as reasonably required by the Contractor and its employees, contractors and/or agents.
3.2	In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.	9.3	The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any plumbing connections (including, but not limited to, meter boxes, pipes, couplings and valves) are of sufficient capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or dangerous access to crawl spaces or the roof) that the Contractor, or employees of the Contractor, reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.	10.5	Where the Contractor requires that Materials, fittings and appliances, or plant and tools used in the Works be stored at the Worksite, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from possible 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.
3.3	The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Materials, Works or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	9.4	The Client acknowledges and accepts that: (a) the Contractor's quotation for repairs to existing roofs (tiles) shall be based only on the replacement of damaged roofing/cladding/tiles and/or any other roofing materials and shall not include the replacement of roofing/cladding/tiles and/or any other roofing materials with slight imperfections unless authorised by the Client prior to the commencement of the Works; or (b) the Contractor's quotation for the replacement of roofing/cladding/tiles and/or any other roofing materials that have slight imperfections, but the Contractor does not deem to be defective or affect the integrity of the roof then this shall be a variation to the original quotation and clause 6.2 will apply;	10.6	Worksite Inductions (a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or (b) where the Contractor is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out the Contractor's Health & Safety Induction before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor.
4.	Errors and Omissions				
4.1	The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s) resulting from an inadvertent mistake made by the Contractor in the information and/or administration of this Contract; and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.				
4.2	If such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Contractor; the Client: (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; and (b) shall not be responsible for any additional costs incurred by the Contractor arising from the error or omission.				
5.	Change in Control				
5.1	The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any change in the Client's details (including, but not limited to, change of name, change of address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.				
6.	Price and Payment				
6.1	At the Contractor's sole discretion, the Price shall be either: (a) as indicated on invoice provided by the Contractor to the Client in respect of Works performed or Materials supplied; or (b) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.				
6.2	The Contractor reserves the right to change the Price: (a) if a variation to the Materials which are to be supplied is requested; or (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects not visible at the time of inspection (including, but not limited to, existing leaks or moisture behind walls etc), incorrect measurements, plans and/or specifications provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, hidden pipes and wiring etc.) which are only discovered on commencement of the Works; or (d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.				
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	products. However, if in the Contractor's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then the Contractor shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.				
12.4	Unless otherwise agreed, the Client shall obtain (at the expense of the Client) all licenses, consents and approvals that may be required for the Works and that are not included in the project documents provided by the Contractor.				
12.5	Prior to commencement of any Works the Contractor shall carry a routine soundness test of the Worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.				
12.6	The Client acknowledges and accepts that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Client.				
12.7	The Client warrants that any existing plumbing, gasfitting and/or associated services in or upon the Worksite that is subject to the Materials and/or Works are in compliance with regulations. The Contractor reserves the right to halt all Works (in accordance with the provisions of clause 7.2 above) if in their opinion the Worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Client not wish to proceed the Contractor will charge a standard fee for the time spent on Worksite based on the Contractor's quotation.				
12.8	Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Contractor 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 Client who has engaged a third party head contractor.				
13.	Title				
13.1	The Contractor and the Client agree that ownership of the Materials shall not pass until:				
	(a) the Client has paid the Contractor all amounts owing to the Contractor; and				
	(b) the Client has met all of its other obligations to the Contractor.				
13.2	Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.				
13.3	It is further agreed that:				
	(a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request;				
	(b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;				
	(c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries;				
	(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;				
	(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;				
	(f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials;				
	(g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;				
	(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor; and				
	(i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.				
14.	Personal Property Securities Act 1999 ("PPSA")				
14.1	Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:				
	(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and				
	(b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by the Contractor to the Client and the proceeds from such Materials as listed by the Contractor to the Client in invoices rendered from time to time.				
14.2	The Client undertakes to:				
	(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;				
	(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of the Contractor; and				
	(d) immediately advise the Contractor of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.				
14.3	Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.				
14.4	The Client shall unconditionally ratify any actions taken by the Contractor under clauses 14.1 to 14.3.				
14.5	Subject to any express provisions to the contrary (including those contained in clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.				
15.	Security and Charge				
15.1	In consideration of the Contractor agreeing to supply the Works, 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.				
15.2	The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.				
15.3	The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorneys 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 Client's behalf.				
16.	Defects and Returns				
16.1	The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials or repairing the Materials.				
16.2	Returns will only be accepted provided that:				
	(a) the Client has complied with the provisions of clause 16.1; and				
	(b) the Contractor has agreed in writing to accept the return of the Materials; and				
	(c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and				
	(d) the Contractor will not be liable for Materials which have not been stored or used in a proper manner; and				
	(e) the Materials are returned in the condition in which they were delivered and all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.				
16.3	If the Contractor accepts that the Client is entitled to reject the Materials following their return pursuant to clause 16.2(b) the Contractor will reimburse the Client's actual and reasonable costs of return delivery.				
16.4	The Contractor will not accept the return of Materials for credit.				
16.5	Subject to clause 16.1, non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.				
17.	Warranties				
17.1	Subject to the conditions of warranty set out in clause 17.2 the Contractor warrants that if any defect in any Works provided by the Contractor becomes apparent and is reported to the Contractor within three (3) years of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the defect.				
17.2	The conditions applicable to the warranty given by clause 17.1 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 Materials or serviced item; or				
	(ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or				
	(iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or				
	(iv) the continued use of any Materials or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or				
	(v) fair wear and tear, any accident or act of God.				
	(b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.				
	(c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.				
17.3	For Materials purchased by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by or be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.				
17.4	The conditions applicable to the warranty given on Materials supplied by the Contractor are contained on the "Warranty Documentation" that will be supplied with the Materials.				
18.	Consumer Guarantees Act 1993 and the Fair Trading Act 1986				
18.1	If the Client is acquiring Materials 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 Materials by the Contractor to the Client.				
18.2	The Contractor agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").				
19.	Intellectual Property				
19.1	Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.				
19.2	Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.				
19.3	The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.				
	The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.				
20.	Default and Consequences of Default				
20.1	Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.				
20.2	If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank disbursement fees).				
20.3	Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 20, 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.				
20.4	Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:				
	(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;				
	(b) the Client has exceeded any applicable credit limit provided by the Contractor;				
	(c) the Client becomes insolvent 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 Client or any asset of the Client.				
21.	Cancellation				
21.1	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 or purchase of Materials or Works 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.				
21.2	If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to deliver any Materials or Works to the Client, the Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Materials or Works at any time before the Materials or Works are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Materials or Works. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.				
21.3	The Client may cancel delivery of the Materials and/or Works by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept delivery of the Materials and/or Works shall place the Client in breach of this Contract.				
21.4	Cancellation of orders for products 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.				
22.	Suspension of Works				
22.1	Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:				
	(a) the Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and				
	(i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or				
	(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or				
	(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and				
	(iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.				
	(b) if the Contractor suspends work, it:				
	(i) is not in breach of Contract; and				
	(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and				
	(iii) is entitled to an extension of time to complete the Contract; and				
	(iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the				
	amount has not been paid or an adjudicator's determination has not been made in respect of the suspension.				
	(c) if the Contractor exercises the right to suspend work, the exercise of that right does not:				
	(i) affect any rights that would otherwise have been available to the Contractor under the Contract and Commercial Law Act 2017; or				
	(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Contractor suspending work under this provision;				
	(d) due to any act or omission by the Client, the Client effectively precludes the Contractor from continuing the Works or performing or complying with the Contractor's obligations under this Contract, then without prejudice to the Contractor's other rights and remedies, the Contractor may suspend the Works immediately after serving on the Client a written notice specifying the payment default or act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by the Contractor as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.				
	If pursuant to any right conferred by this Contract, the Contractor suspends the Works and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, the Contractor shall be entitled to terminate the Contract, in accordance with clause 21.				
23.	Privacy Policy				
23.1	All emails, documents, images or other recorded information held or used by the Contractor is "Personal Information" as defined and referred to in clause 23.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act must be approved by the Client by written consent, unless subject to an operation of law.				
23.2	Notwithstanding clause 23.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:				
	(a) IP address, browser, email client type and other similar details;				
	(b) tracking website usage and traffic; and				
	(c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information").				
	If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.				
23.3	The Client authorises the Contractor or the Contractor's agent to:				
	(a) access, collect, retain and use any information about the Client:				
	(i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact details, email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or				
	(ii) for the purpose of marketing products and services to the Client.				
	(b) disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.				
23.4	Where the Client or individual authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.				
23.5	The Client shall have the right to request (by e-mail) from the Contractor, a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information.				
23.6	The Contractor 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.				
23.7	The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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 .				
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;				
	(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.				
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.	Trusts				
25.1	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 Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:				
	(a) the Contractor 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 or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;				
	(c) the Client will not during the term of the Contract without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:				
	(i) the removal, replacement or retirement of the Client as trustee of the Trust;				
	(ii) any alteration to or variation of the terms of the Trust;				
	(iii) any advancement or distribution of capital of the Trust; or				
	(iv) any resettlement of the trust fund or trust property.				
26.	General				
26.1	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 arbitration in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).				
26.2	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.				
26.3	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 Dunein Courts of New Zealand.				
26.4	Subject to the CGA, the liability of the Contractor and the Client under this Contract shall be limited to the Price.				
26.5	The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.				
26.6	The Client cannot licence or assign without the written approval of the Contractor.				
26.7	The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.				
26.8	The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client.				

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- 26.9 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 a payment to the Contractor, following cessation of a Force Majeure.
- 26.10 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.