

CLIENT INFORMATION FORM

Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.
This is a Client Information Form under the Construction Contracts Act 2002. Please read clause 22 on the reverse.

Client Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:			
Full or Legal Name:			
Physical Address:			Postcode:
Billing Address:			Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
Personal Details: <i>(please complete if you are an Individual)</i>			
D.O.B.:		Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
Trading Name:		GST No: <i>(if applicable)</i>	
Company Number:		Date Incorp. <i>(current owners)</i> :	
Contact Person:		Phone No.	
Nature of Business:			
Directors / Owners / Trustee: <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:		D.O.B.:	
Private Address:			Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
(2) Full Name:		D.O.B.:	
Private Address:			Postcode:
Driver's Licence No:	Phone No:	Mobile No:	

I certify that the above information is true and correct and that I accept the supply of credit by the Contractor *(if applicable)*. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Exotic Electrical NZ Limited which form part of and are intended to be read in conjunction with this Client Information Form and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): _____ SIGNED (CONTRACTOR): _____
 Name: _____ Name: _____
 Position: _____ Position: _____
 Date: _____ Date: _____

OFFICE USE ONLY		
Account / Ref. No.	DATA INPUTTED	DATE
		/ /

Exotic Electrical NZ Limited – Terms & Conditions of Trade

1. Definitions			
1.1	"Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:	(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.	notify the Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
	(a) if there is more than one Client, is a reference to each Client jointly and severally; and	The Contractor reserves the right to change the Price:	(a) The Client acknowledges and accepts that:
	(b) if the Client is a partnership, it shall bind each partner jointly and severally; and	(a) if a variation to the Materials which are to be supplied is requested; or	(i) the Contractor has performed temporary repairs that:
	(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and	(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or	(i) the Contractor offers no guarantee against the recurrence of the initial fault, or any further damage caused; and
	(d) includes the Client's executors, administrators, successors and permitted assigns.	(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 and/or crawl spaces, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or	(ii) the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair 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.	(d) in the event of increases to the Contractor in the cost of labour or Materials (including but not limited to overseas transactions that may give rise to exchange rate fluctuations, foreign currency rates, exchange and/or international freight and insurance charges, etc.) which are beyond the Contractor's control.	(b) the Contractor shall not be responsible or liable for any defect in other appliances or power points as a coincidence of the Contractor installing the Materials;
1.3	"Contractor" means Exotic Electrical NZ Limited, its successors and assigns.	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.	(c) the Contractor shall not accept any responsibility for any damage that may arise during the installation of light switches in the event that any third-party contractor employed by the Client has removed any or all reference to the positioning of light switches by either gipping or plastering the designated area. The Client accepts that installation of light switches will then be at the sole discretion of the Contractor. If the Client believes that they have any claim in relation to Works undertaken by that third party, their said claim must be made against the third-party contractor in the first instance;
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.	At the Contractor's sole discretion a deposit may be required. Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:	(d) any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which the Contractor's Materials are installed or connected to, or by workmanship not performed by the Contractor, shall not be covered by any applicable warranty pertaining to the Materials;
1.5	"Intended Use" means a product and the use thereof, for which the product is intended to be or reasonably likely to be associated with the Works.	(a) on delivery of the Materials;	(e) if the Client's responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage;
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:	(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;	(f) the Contractor shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of the Contractor (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which the Contractor may have to break up or disturb (performance of the Works), unless due to the negligence of the Contractor;
	(a) the product is not, or will not be, safe; or	(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 notification;	(g) under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
	(b) does not, or will not, comply with the relevant regulatory provisions; or	(d) the date specified on any invoice or other form as being the date for payment; or	(i) the Contractor shall suspend the Works;
	(c) the product does not perform, or is not capable of performing, for the use to the standard represented to conform by or for a person in the chain of responsibility for the product.	(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.	(ii) the Client shall be fully responsible for the resolution of any resulting problem;
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 clause 6 below.	6.4 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.	(iii) any additional cost incurred by the Contractor shall be added to the Price under clause 6.2;
1.8	"Works" means all Works (including consultation, manufacturing and/or installation) of 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).	6.5 The Contractor may in its discretion allocate any payment received from the Client towards any other debts 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 allocation 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 PPSA) in the Materials.	(h) Materials supplied may:
1.9	"Worksite" means the address nominated by the Client to which the Materials are to be supplied by the Contractor.	6.6 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 2002. Nothing in this clause 6.6 prevents the Client from the ability to dispute any invoice.	(i) exhibit Variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Contractor will make every effort to match batches of product supplied in order to minimise such variations; or
2. Acceptance		6.7 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 2002. Nothing in this clause 6.7 prevents the Client from the ability to dispute any invoice.	(ii) expand, contract or distort as a result of exposure to heat, cold, weather;
2.1	The Client is taken to have exclusively accepted and is immediately bound jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.	6.8 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.	(iii) mark or stain if exposed to certain substances; and
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.	6.9 The Contractor may in its discretion allocate any payment received from the Client towards any other debts 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 allocation 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 PPSA) in the Materials.	(iv) be damaged or disfigured by impact or scratching.
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.	6.10 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 2002. Nothing in this clause 6.10 prevents the Client from the ability to dispute any invoice.	(v) the Contractor only responsible for components that are replaced by the Contractor and does not at any stage accept any liability in respect of previous materials and/or works supplied by any other third party that subsequently fail and found to be the source of the failure or where the Materials are fitted by someone other than the Contractor.
2.4	The Client acknowledges that the supply of 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.	6.11 Unless otherwise stated, the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.	It shall be the Client's responsibility to ensure that:
2.5	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.	6.12 The Contractor's commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time given the Client written notice, where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:	(a) where a third party is installing the Materials:
2.6	Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied 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. 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.	(a) make a selection; or	(i) that they are suitable for the intended use;
2.7	Where the Client is a tenant (and therefore not the owner of the land and premises where Works are to be carried out) then the Client warrants that they have obtained the full consent of the owner for the Contractor to carry out the Works on the premises and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for the Works provided under this Contract and to indemnify the Contractor against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by the Contractor, except where such claim has arisen because of the negligence of the Contractor when undertaking the Works. Furthermore, the Client agrees that they shall, upon request from the Contractor, provide evidence that:	(b) have the Worksite ready for the Works; or	(ii) that the Materials are fitted to a good trade standard;
	(a) they are the owner of the land and premises upon which the Works are to be undertaken; or	(c) notify the Contractor that the Worksite is ready.	(c) the Materials are not in any way adapted to a use for which they are not specifically intended; and
	(b) where they are a tenant, that they have the consent of the owner for the Works to be carried out on the land and premises.	6.13 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 enable the Works to be supplied at the time and place as was envisaged between 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.	(d) the Materials are not added to or repaired using components not recommended or approved by the manufacturer.
2.8	In the event that the Client requests the Contractor to:	6.14 Risk	
	(a) make an emergency Call-Out for critical equipment after hours or causes the Contractor to rescure or rescue equipment then the Contractor reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between the Contractor and the Client; and	(a) if the Contractor retains ownership of the Materials under clause 12 then:	
	(b) provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (not limited to working through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between the Contractor and the Client.	(a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:	
2.9	The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not 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.	(i) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or	
2.10	If the Contractor has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.	(ii) 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 the address).	
2.11	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.	(b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.	
3. Authorised Representatives		6.15 Notwithstanding clause 6.14, 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 then such materials 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 the Client 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.	
3.1	The Client acknowledges that the Contractor shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Works and/or to request any variation thereto on the Client's behalf. The Client 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 Works or variations requested thereto by the Client's duly authorised representative.	6.16 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.	
4. Errors and Omissions		6.17 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.	
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):	6.18 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.	
	(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or	6.19 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.	
	(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.	6.20 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.	
4.2	In the event such an error and/or omission occurs in accordance with clause 4.1, and in the event the Client's details (including but not limited to changes in the Client's name, 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.	6.21 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.	
5. Change in Control		6.22 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.	
5.1	The Client shall give the Contractor not less than fourteen (14) days prior written notice if any proposed change of ownership of the Client or any other change in the Client's details (including but not limited to changes in the Client's name, address, contact phone or fax 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.	6.23 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.	
6. Price and Payment		6.24 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.	
6.1	All the above are subject to the Contractor's sole discretion. The Price shall be either:	6.25 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.	
	(a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or	6.26 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.	

Exotic Electrical NZ Limited – Terms & Conditions of Trade

- 11.6 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- 11.7 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Contractor, then the Contractor shall notify the Client immediately. The power shall not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.
- 11.8 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being "Safe working on Low Voltage Electrical" until such time as relevant Statutory Acts and Work Place Regulations⁵. The Contractor's live Works procedures are designed to eliminate risk of injury to the Contractor's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 19.2.
- 11.9 Notwithstanding clause 11.8 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.
12. Title
- 12.1 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.
- 12.2 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 12.1 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 to 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 recover 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 if so directed;
- (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.
13. Personal Property Securities Act 1999 ("PPSA")
- 13.1 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.
- 13.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any 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.
- 13.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client agrees to register under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by the Contractor under these terms and conditions.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
14. Security and Charge
- 14.1 In consideration of the Contractor agreeing to supply the Works, the Client charges all of its rights, title and interests (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.
- 14.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 14.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
15. Defects and Returns of Materials
- 15.1 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 quality of the Materials. The Client shall have 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.
- 15.2 Materials will not be accepted for return other than in accordance with 15.1 above.
16. Warranties
- 16.1 For Materials not manufactured 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.
- 16.2 To the extent permitted by statute, no warranty is given by the Contractor as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
17. Consumer Guarantees Act 1993
- 17.1 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. Intellectual Property
- 18.1 Where the Contractor has designed, drawn, written plans or a schedule of Work for any other Work 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. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 18.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.
19. Default and Consequences of Default
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 19.3 If the Client has any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Contractor;
- (c) the Client becomes insolvent 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.
20. Cancellation
- 20.1 Without prejudice to any other rights or remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notices) then the Contractor may terminate the supply of the Works. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause. The Contractor may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall be liable to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profit).
- 20.4 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.
21. Privacy Policy
- 21.1 All emails, documents, images or other recorded information held or used by the Contractor is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 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 and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to access and/or use the Contractor's services in relation to such Cookies.
- 21.3 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.
- 21.4 The Client authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Client:
- (i) including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue debts balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness;
- (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 assessing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 21.5 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.6 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.
- 21.7 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.
- 21.8 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>.
22. Suspension of Works
- 22.1 The Client 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) the scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and
- (iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract;
- (b) if the Contractor suspends work, it:
- (i) is not in breach of Contract; and
- (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
- (iii) is entitled to an extension of time to complete the Contract; and
- (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Contractor exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Contractor under the Contract and Commercial Law Act 2017; or
- (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Contractor suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes the Contractor from continuing the 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 the 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 commencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to a right conferred by this Contract, the Contractor suspends the Works and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, the Contractor shall be entitled to terminate the Contract, in accordance with clause 20.
23. Service of Notices
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by 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.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
24. Trusts
- 24.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or hereafter may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might result in a release of the Client from the Trust;
- (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advance or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
25. General Lien
- 25.1 The risk of damage of any such items shall always remain with the Client and the Client is required to maintain insurance policies over those items while they are in the Contractor's possession.
- 25.2 Where the Client leaves any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 25.3 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Client.
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 adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 These terms and conditions shall not be taken 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 Auckland Courts of New Zealand.
- 26.4 Subject to the CGA, the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 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.
- 26.6 The Client cannot licence or assign without the written approval of the Contractor.
- 26.7 The Contractor may elect to subcontract any part of the Works but shall not be relieved of either its liability or obligations 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.
- 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 of embargo, including but not limited to 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.
- 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.