

Gateman Automatic Gates 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 Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally, and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.2 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
 - 1.3 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using the Supplier's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
 - 1.4 "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 Services.
 - 1.5 "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.
 - 1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between the Supplier and the Client in accordance with clause 5 below.
 - 1.7 "Services" means all Services (including consultation, manufacturing and/or installation services) or Goods supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms "Services" or "Goods" shall be interchangeable for the other).
 - 1.8 "Supplier" means Gateman Automatic Gates Limited, its successors and assigns.
 - 1.9 "Worksite" means the address nominated by the Client to which the Goods are to be supplied by the Supplier.
 2. **Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Services.
 - 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, then the terms of this Contract shall prevail.
 - 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
 - 2.4 The Client acknowledges that:
 - (a) the supply of Services on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account;
 - (b) if the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery;
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 5.2. In all such cases the Supplier will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Services on hold, as per clause 6.2 until such time as the Supplier and the Client agree to such changes;
 - (d) any advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action, adherence to council bylaws, required resource consents, product selection or the condition of the materials supplied by the Client being inferior), and such advice or recommendations are not acted upon, then the Supplier shall require the Client or their agent to authorize commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services nor will such losses or damages be deemed a defect. If the Client instructs the Supplier to rectify any damage or defects in the materials supplied, this will become a variation to the original quotation and will be charged at the Supplier's normal hourly rate.
 - 2.5 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.
3. **Errors and Omissions**
 - 3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
 - 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Supplier, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
 - 4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Supplier because of the Client's failure to comply with this clause.
5. **Price and Payment**
 - 5.1 At the Supplier's sole discretion, the Price shall be either:
 - (a) as indicated on invoices provided by the Supplier to the Client in respect of Services performed or Goods supplied; or
 - (b) the Supplier's Price at the date of delivery of the Services according to the Supplier's current price list; or
 - (c) the Supplier's estimated Price (subject to clause 5.2). No allowances shall be made for Worksite preparation, unless specified in the estimate. The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than 10% will be subject to Client approval before proceeding with the Services; or
 - (d) the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.
 - 5.2 The Supplier reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, 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, 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 due to movement in timber and posts, or as a result of connecting the power and controls from the house to the gate, etc.) which are only discovered on commencement of the Services; or
 - (d) if during the course of the Services, the Goods cease to be available from the Supplier's third-party suppliers, then the Supplier reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (e) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase because of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.
 - 5.3 Variations will be charged for based on the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
 - 5.4 At the Supplier's sole discretion, a non-refundable deposit may be required.
 - 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the dates determined by the Supplier, which may be:
 - (a) on completion of the Services;
 - (b) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods 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;
 - (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 Supplier.
 - 5.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Support 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be used other than to remedy defects in the performance of the Contractor's obligations under the Contract.
 - 5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.
 - 5.8 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
 - 5.9 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Supplier is a claim made under the Construction Contracts Act 2002. Nothing in this clause 5.9 prevents the Client from the ability to dispute any invoice.
 - 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Provision of the Services**
 - 6.1 Subject to clause 6.2 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
 - 6.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable if the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the Worksite ready for the Services; or
 - (c) notify the Supplier that the Worksite is ready.
 - 6.3 At the Supplier's sole discretion, the cost of delivery is included in the Price.
 - 6.4 The Supplier may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 6.5 Any time specified by the Supplier for delivery of the Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client because of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. If the Supplier is unable to supply the Services as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.
7. **Worksite Access and Condition**
 - 7.1 The Supplier is not responsible for the removal of rubbish from or clean-up of the building/construction Worksites. All rubbish generated by the Supplier 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.
 - 7.2 It is the intention of the Supplier and agreed by the Client that:
 - (a) the Client shall ensure that the Supplier always has clear and free access to the Worksite to enable them to undertake the Services (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). The Supplier shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier;
 - (b) it is the Client's responsibility to provide the Supplier, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - (c) the Client shall contact adjoining neighbours and gain their permission to remove any walls or fences or boundaries and unless otherwise agreed, it shall be the Client's responsibility to organise either temporary fencing and/or security guards to secure the Worksite during the performance of the Services by the Supplier and shall be liable for all costs associated in taking all reasonable precautions to protect against destruction or damage by way of vandalism or theft. Failure to comply with this clause 7.2(c) in the event that the Worksite is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
 - 7.3 The Client agrees to be present at the Worksite when and as reasonably requested by the Supplier and its employees, contractors and/or agents.
 - 7.4 **Worksite Inductions**
 - (a) in the event the Client requires an employee or sub-contractor of the Supplier 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 Supplier's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the Supplier is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out the Supplier's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the Services 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 Supplier.
8. **Risk**
 - 8.1 If the Supplier retains ownership of the Goods under clause 12 then:
 - (a) until the Supplier is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; or
 - (ii) the Goods are delivered by the Supplier or the Supplier's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where the Supplier is to both supply and install Goods then the Supplier shall maintain a contract Services insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
 - 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods 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 Goods are insured adequately or at all. If such Goods are lost, damaged, or destroyed then replacement of the Goods shall be at the Client's expense.
 - 8.3 The Client warrants that any structures (where applicable) to which the Goods are to be affixed can withstand the installation of the Goods and that are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos) that the Supplier, or employees of the Supplier, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then the Supplier shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.2 above) until the Supplier is satisfied that it is safe for the installation to proceed.
 - 8.4 The Supplier 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 if any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, or other information.
 - 8.5 The Client acknowledges and accepts that the Supplier is only responsible for parts that are replaced by the Supplier and that if other parts/materials, subsequently fail, the Client agrees to indemnify the Supplier against any loss or damage to the materials.
 - 8.6 The Supplier reserves the right to touch-up all products supplied and installed on the Worksite to rectify minor blemishes or damage to paintwork.
 - 8.7 The Client acknowledges and accepts that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in the Supplier's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier; and
 - (b) any information or figures provided by the Supplier regarding the performance of the Goods are given in good faith. The information provided is based on industry prescribed estimates of Goods working under optimal operating conditions; and
 - (c) variations of colour, texture, marking and weathering may occur due to the Goods being man-made or natural products (including, but not limited to, timber, timber composite, paving and natural stone products). Whilst every effort will be taken by the Supplier to match colour, texture and marking of such natural products, the Supplier shall not be liable for any loss, damages, or costs (howsoever arising), resulting from any variation in colour, texture and marking between batches, or sale samples, and the final Goods provided; and
 - (d) the Goods may slowly fade or change colour over time, expand, contract, or distort because of exposure, heat, cold weather and with natural weathering over time or be damaged or disfigured by bird or animal faecal matter, impact, or scratching, especially when positioned outdoors.
9. **Automated Gates & Doors Risks**
 - 9.1 The Client acknowledges that under certain circumstances automated gates may fail to operate in an effective manner at no fault of the Supplier, such circumstances may include:
 - (a) failure of the power supply and back-up power supply; and/or
 - (b) interference of the radio signal due to obstructions including but not limited to trees, walls, buildings, retaining walls or other shading; and/or
 - (c) poor maintenance, inadequate testing; and/or
 - (d) interference by a third-party contractor or any unqualified or unauthorised persons.
 - 9.2 Where the Supplier is required to remedy such issues, this shall be charged as a variation under clause 5.2.
 - 9.3 The Supplier shall accept no liability for any loss or damage to persons or property due to a malfunction of any automated system installed by the Supplier unless caused directly because of any negligence by the Supplier.
10. **Hidden Services**
 - 10.1 Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
 - 10.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs, and fines because of damage to services not precisely located and notified as per clause 10.1.
11. **Compliance with Laws**
 - 11.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any Worksafe Health and Safety Laws relating or any other relevant safety standards or legislation pertaining to the Services.
 - 11.2 Both parties acknowledge and agree:
 - (a) to comply with the Building Act 2004 (including any subsequent Amendments) in respect of all workmanship and building products to be supplied during the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
 - 11.3 Where the Client has supplied products for the Supplier to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Supplier's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then the Supplier shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 5.2.
 - 11.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
 - 11.5 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Supplier 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 Supplier and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Supplier all amounts owing to the Supplier; and
 - (b) the Client has met all its other obligations to the Supplier.
 - 12.2 Receipt by the Supplier 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. It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to the Supplier on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries;

Gateman Automatic Gates Limited – Terms & Conditions of Trade

- (d) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (f) unless the Goods have become fixtures the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (g) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier; and
- (i) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods 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 Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Client and the proceeds from such Goods.
- 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 Supplier 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 Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereover; not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of the Supplier; and
- (d) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in proceeds derived from such sales.
- 13.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Supplier, 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 Supplier under clauses 13.1 to 13.5.
- 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 Supplier agreeing to supply the Services, 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.
- 14.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 14.3 The Client irrevocably appoints the Supplier and each director of the Supplier 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 in Goods**
- 15.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above.
- 16. Returns of Goods**
- 16.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
- (b) the Supplier has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures, and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.2 The Supplier will not accept the return of non-defective Goods for credit.
- 16.3 Subject to clause 15.1, non-stocklist items or Goods 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 Supplier warrants that if any defect in any Goods manufactured or Services provided by the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier'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 Goods or serviced item; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
- (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
- (c) in respect of all claims the Supplier 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 Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation, or warranty other than that which is given by the manufacturer of the Goods.
- 17.4 In the case of second-hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 18. Consumer Guarantees Act 1993**
- 18.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Supplier to the Client.
- 19. Intellectual Property**
- 19.1 Where the Supplier has designed, drawn, written plans or a schedule of Services, 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 Supplier, and shall only be used by the Client at the Supplier's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 19.2 The Client warrants that all designs, specifications, or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 19.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, digital images, plans or products which the Supplier 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 Supplier'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 Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, 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 Supplier 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 Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier'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 Supplier;
- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters 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 rights or remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice) then the Supplier may suspend or terminate the supply of the Services. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 21.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Supplier for Services already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels the delivery of Services the Client shall be liable for all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.
- 22. Privacy Policy**
- 22.1 All emails, documents, images or other recorded information held or used by the Supplier is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. The Supplier 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 Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier 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.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier 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 Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Client authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Client:
- (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier 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.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Client shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 22.6 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.7 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within twenty (20) days of receipt of the complaint. If 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>.
- 23. Suspension of Services**
- 23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and:
- (i) the payment is not paid in full by the due date for payment in accordance with clause 5.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
- (iv) the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes the Supplier from continuing the Services or performing or complying with the Supplier's obligations under this Contract, then without prejudice to the Supplier's other rights and remedies, the Supplier may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission, or default upon which the suspension of the Services is based. All costs and expenses incurred by the Supplier because of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, the Supplier suspends the Services and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 21.
- 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 after entering the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 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 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 Lower High Courts of New Zealand.
- 26.4 Subject to the CGA, the Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 26.5 The Supplier 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 Supplier.
- 26.7 The Supplier may elect to subcontract hereunder, any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 26.8 The Client agrees that the Supplier 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 Supplier to provide Services 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 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 Supplier.
- 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.