

Empire Electrical Services (2017) Limited – Terms & Conditions of Trade

1. Definitions

1.1 '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.

1.2 'Contractor' means Empire Electrical Services (2017) Limited, its successors and assigns or any person acting on behalf of and with the authority of Empire Electrical Services (2017) Limited.

1.3 '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 (Equipment for hire) as specified in any proposal, quotation, order, invoice or other documentation, and:

- if there is more than one Client, is a reference to each Client jointly and severally; and
- if the Client is a partnership, it shall bind each partner jointly and severally; and
- if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- includes the Client's executors, administrators, successors and permitted assigns.

1.4 'Works' means all Works (including consultation, manufacturing, and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable with the other).

1.5 'Intended Use' means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.

1.6 'Non-Conforming Building Product' means any associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Works:

- the product is not, or will not, be safe; or
- does not, or will not, comply with the relevant regulatory provisions; or
- 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.

1.7 'Equipment' means all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other written authorisation furnished by the Contractor to the Client.

1.8 'Materials' means the materials, the Minimum Requirements as described on the invoices, quotation, authority to hire, or any other forms as provided to the Contractor to the Client.

1.9 'Site' means the address nominated by the Client to which the Materials are to be supplied by the Contractor and/or where the Equipment is to be located.

1.10 'Confidential Information' means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, 'Personal Information' such as: 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) and pricing details.

1.11 'Cookies' means 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.

1.12 'Price' means the Price payable (plus any Goods and Services Tax ("GST" where applicable) for the Works and/or Equipment a hire agreed between the Contractor and the Client in accordance with clause 6 below.

2. Acceptance

2.1 The Client shall be 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/Equipment.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges and accepts 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.

2.5 In the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment term, the Contractor reserves the right to refuse delivery.

2.6 In the event that the Client requests the Contractor to:

- cancel or reschedule other work when the Contractor receives 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
- provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including but 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.

2.7 If the Contractor has been requested by the Client to diagnose a fault that requires the Contractor to travel and/or stay over night, all costs involved will be charged to the Client irrespective of whether or not the repair is made.

2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

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/Equipment and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to pay the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Works/Equipment or variation's requested thereto by the Client's duly authorised representative.

4. Errors and Omissions

4.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or
- contained/included from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Client shall not be entitled to treat this Contract as repudiated for render it invalid.

5. Change in Control

5.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any 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. Price and Payment

6.1 At the Contractor's sole discretion the Price shall be either:

- as indicated on invoices provided by the Contractor to the Client in respect of Works performed and/or Equipment supplied; or
- the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.

6.2 The Contractor reserves the right to change the Price:

- if a variation to the Materials which are to be supplied is requested; or
- if a variation to the Works/Equipment originally scheduled (including any applicable plans or specifications) is requested; or
- where additional Works are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather conditions, limitations to the Site access and/or crawl spaces, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, remedial work required due to existing workmanship being of a poor quality or non-compliant to the required standard, hard rock or other barriers below the surface, metal reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
- in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.

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.

6.4 At the Contractor's sole discretion a deposit may be required.

6.5 Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Client in full and delivered by the Contractor, which may be:

- on delivery of the Materials/Equipment; or
- on completion of the Works; or
- 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 Site but not yet installed;
- for certain approved Client's, 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;
- the date specified on any invoice or other form as being the date for payment; or
- failure 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.

9. Access

9.1 The Client shall ensure that the Contractor has clear and free access to the Site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and/or paved or grassed areas), unless due to the negligence of the Contractor.

9.2 It is the Client's responsibility to provide the Contractor, while at the Site, with adequate access to available water, electricity, toilet and washing facilities as required.

10. Site Inductions

10.1 In the event the Client requires an employee or sub-contractor of the Contractor to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate;

- where the Contractor is in control of the Site, the Client and/or the Client's third-party contractors must attend and carry out the Contractor's Health & Safety induction course before entry to the Site will be granted. Inspection of the Site during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor.

11. Compliance with Laws

11.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and by-laws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating to any other relevant safety standards or legislation pertaining to the Works.

11.2 Both parties acknowledge and agree:

- the Contractor shall comply with the Building and Construction Amendment Act 2013, in respect of all workmanship and building products to be supplied during the course of the Works; and
- that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.

11.3 Where the Client has supplied products for the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and are for their intended Use and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then the Contractor shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.

11.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

11.5 The Contractor shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works.

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 if isolated will not be re-energised until such time 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 reconnection 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 Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". 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 6.2.

11.9 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Contractor agrees at all times to comply with sections 28 and 34 of the "HSW Act" and to maintain their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Site or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

12. Title to Materials

12.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:

- the Client has paid the Contractor all amounts owing to the Contractor; and
- the Client has met all of their 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:

- until ownership of the Materials passes to the Client in accordance with clause 12.1 above, the Contractor is the owner of a bailment of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request;
- 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;
- the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries;
- 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 such action in trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
- 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 or return the resulting product to the Contractor as it does;
- 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;
- the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;
- the Client shall not charge or grant an encumbrance over the Materials nor grant nor will it ever give any interest in the Materials while they remain the property of the Contractor; and
- 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:

- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- a security interest is taken in all Materials/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.

13.2 The Client undertakes to:

- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- indemnify, and upon demand remunerably, the Contractor for all expenses incurred in registering a financing statement or releasing any Materials/Equipment charged thereby;
- not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials/Equipment and/or collateral (account) in favour of a third party without the written consent of the Contractor; and
- immediately advise the Contractor if any material change in 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 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 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 clauses 13.1 to 13.5.

13.7 Subject to any express provisions to the contrary (including those contained in this clause 13.7), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.

14. Security and Charge

14.1 In consideration of the Contractor agreeing to supply the Works/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, really or other assets capable of being charged, owned by the Client either now or in the future, to

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secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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 attorneys 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

15.1 The Client shall inspect the Materials/Equipment on Delivery and shall within forty-eight (48) hours of Delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Materials/Equipment within a reasonable time following Delivery if the Client believes the Materials/Equipment are defective in any way. If the Client shall fail to comply with these provisions the Materials/Equipment shall be presumed to be free from any defect or damage. For defective Materials/Equipment, which the Contractor has agreed in writing that the Client is entitled to replace, the Contractor's liability will be limited (at the Contractor's discretion) to repairing the Materials/Equipment or repairing the Materials/Equipment.

15.2 Materials/Equipment will not be accepted for return for any reason other than those specified in clause 15.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).

16. Returns of Materials

16.1 Returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 15.1; and
- (b) the Contractor has agreed in writing to accept the return of the Materials; and
- (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) the Contractor will not be liable for Materials which have not been stored or used in a proper manner; and
- (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

16.2 The Contractor may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.

16.3 Returned Materials may (at the Contractor's sole discretion), incur restocking and handling fees.

16.4 Subject to clause 15.1, non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

17. Warranties

17.1 Subject to the conditions of warranty set out in clause 17.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.

17.2 The conditions applicable to the warranty given by clause 17.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Materials; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of the Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God;
- (b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent;
- (c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim;

17.3 For Materials 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 nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

18. Consumer Guarantees Act 1993

18.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Contractor to the Client.

19. Intellectual Property

19.1 Where the Contractor has designed, drawn, written, plans or a schedule of Works/Equipment, or created any products for the Client, then the copyright in all such drawings, plans, 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.

19.2 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 in respect of any action taken by a third party against the Contractor in respect of any such infringement.

19.3 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.

20. Default and Consequences of Default

20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).

20.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

20.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Contractor;
- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

21.1 Without prejudice to any other 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 notice/s) then the Contractor may suspend the Works immediately. 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.

21.2 The Contractor may cancel any contract in which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced (or the Materials/Equipment is to be delivered) by giving written notice to the Client. On giving such notice the Contractor shall repay 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 or Materials/Equipment already provided. The Contractor 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 Works/Equipment 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 profits).

21.4 Cancellation of orders for Materials/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Policy

22.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information as defined and referred to in clause 22.3 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 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR" (collectively, "EU Data Privacy Laws"). 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 and/or the GDPR. Any release

of such Personal Information must be in accordance with the Act and the GDPR (where relevant) 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 Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of information such as the Client's IP address, browser, email client, and other similar details;

- (a) IP address, browser, email client, 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.

22.3 The Client authorises the Contractor or the Contractor's agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including but not limited to, occupation, gender, date of birth, 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 Contractor from the Client directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

22.4 Where the Client is an individual the authorises under clause 22.3 are authorises or consents for the purposes of the Privacy Act 1993.

22.5 The Client authorises the Contractor to retain (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.

22.6 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

22.7 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/complaints>.

23. Suspension of Works

23.1 Where the Contractor is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:

- (a) the Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if the Contractor suspends work:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss, 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 recommencement shall be payable by the Client as and when they are avarable.

23.2 If pursuant to any act or omission by this Contract, the Contractor suspends the Works and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, the Contractor shall be entitled to terminate the Contract, in accordance with clause 21.

24. Service of Notices

24.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client warrants with the Contractor as follows:

- (a) the Client will not act in any manner which the Client now or subsequently may have against the Trust and its trust fund;
- (b) the Client has full 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 prejudice that right of indemnity;
- (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 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 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 The Contractor may cancel any contract in which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced (or the Materials/Equipment is to be delivered) by giving written notice to the Client. On giving such notice the Contractor shall repay 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 or Materials/Equipment already provided. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

26.4 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/Equipment on hire).

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 out any part of the Works but shall not be relieved from its obligations under the Contract by doing so. 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 or other event beyond the reasonable control of either party.

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.

Additional Terms & Conditions Applicable to Hire Only

27. Hire Period

27.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.

27.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from the Contractor's premises and will continue until the return of the Equipment to the Contractor's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

27.3 If the Contractor agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Contractor's premises and continue until the Client notifies the Contractor that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

27.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

27.5 No advance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Contractor confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Contractor immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

28. Risk to Equipment

28.1 The Contractor retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.

28.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Contractor for all loss, theft or damage to the Equipment however caused and whether by negligence, carelessness, the fault of the Client or whether by breakage, loss, theft, or damage is attributable to any negligences, failure or omission of the Client.

28.3 The Client will insure or self-insure the Contractor's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

28.4 The Client accepts full responsibility for and shall keep the Contractor indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

29. Title to Equipment

29.1 The Equipment is and will at all times remain the absolute property of the Contractor.

29.2 If the Client fails to return the Equipment to the Contractor then the Contractor or the Contractor's agent may (as the invitee of the Client) enter up into and land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

29.3 The Client is not authorised to pledge the Contractor's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

30. Client's Responsibilities

30.1 The Client shall:

- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (b) notify the Contractor immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (c) maintain the Equipment as is required by the Contractor (including, but not limited to, maintaining (where applicable) water, oil and fluid levels etc);
- (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Contractor or posted on the Equipment;
- (e) ensure that:
 - (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and are fully licensed to operate the Equipment and shall provide evidence of the same to the Contractor upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
- (f) be liable for any infringements, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Contractor relating to any such matters or occurrences;
- (g) comply with all workplace health and safety laws relating to the Equipment and its operation;
- (h) at termination of the hire, that all the Equipment is suitable packed and that the equipment is delivered complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Contractor;
- (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
- (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract or be entitled to lien over the Equipment;
- (k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (l) indemnify and hold harmless the Contractor in respect of all claims arising out of the use of the Equipment.

30.2 The Client shall not:

- (a) alter or make any additions to the Equipment including but without limitation altering, or removing, any part of the Equipment;
- (b) make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (c) exceed the recommended limits in respect of the use of the Equipment;
- (d) use or carry any illegal, prohibited or dangerous substances in or on the Equipment;
- (e) fix any equipment in such a manner as to make it legally a fixture forming part of any freehold.

30.3 Immediately on request by the Contractor the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Contractor;
- (b) all costs incurred in clearing the Equipment;
- (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (iv) in the Contractor's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- (d) the cost of fuels and consumables provided by the Contractor and used by the Client;
- (e) any:
 - (i) lost hire fees the Contractor would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by the Contractor in packing and/or picking up and returning the Equipment to the Contractor's premises if the Client does not return the Equipment to the Contractor's premises within any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (iii) insurance excess payable in relation to any damage caused by either the Client or the Contractor in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Contractor's.

31. Wet Hire

31.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Contractor.

31.2 In the event of Wet Hire, the operator of the Equipment remains an employee of the Contractor and operates the Equipment in accordance with the Client's instructions. As such the Contractor shall not be liable for any actions of the operator in following the Client's instructions.

Client's Initials: _____

Date: _____