

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

1.	<b>Definitions</b>	6.6	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 Works during which all Works are to be completed and all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - section 18(a) to 18(f) of the Construction Contracts Amendment Act 2015.	9.3	<b>Site Inductions</b>
1.1	<b>Contract</b> 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.				(a) 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; or
1.2	<b>Contractor</b> 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.				(b) where the Contractor is in control of the Site, the Client and/or the Client's third-party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Works will be by <b>appointment only</b> 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.
1.3	<b>Client</b> 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 prior invoice, order, or other documentation, and:	6.7	Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.		
	(a) if there is more than one Client, is a reference to each Client jointly and severally; and	6.8	The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment shall be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PSPA) in the Materials.		
1.4	<b>Works</b> means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).	6.9	The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Contractor is a claim made under the Construction Contracts Act 2002.	10.	<b>Underground Locations</b>
1.5	<b>Intended Use</b> means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.	6.10	Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply of Works/Equipment by the Contractor under this or any other agreement. 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.	10.1	Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the Site 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 Site.
1.6	<b>Non-Conforming Building Product</b> means any associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Works:			10.2	Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
	(a) the product is not, or will not be, safe;			11.	<b>Compliance with Laws</b>
	(b) does not, or will not, comply with the relevant regulatory provisions; or			11.1	The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
1.7	<b>Equipment</b> 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 work authorisation form provided by the Contractor to the Client.	7.	<b>Delivery</b>	11.2	Both parties acknowledge and agree:
1.8	<b>Minimum Hire Period</b> means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Contractor to the Client.	7.1	Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible date.		(a) to comply with the Building Amendment Act 2013, in respect of all workmanship and building products to be supplied during the course of the Works; and
1.9	<b>Site</b> means the address nominated by the Client to which the Materials are to be supplied by the Contractor and where the Equipment is to be located.	7.2	The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (the "Extension") which is not caused by the Contractor's delay by an event beyond the Contractor's control, including but not limited to any failure by the Client to:		(b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards that are applicable.
1.10	<b>Confidential Information</b> 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.	7.3	Deliver Materials/Equipment is taken to occur at the time that:	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 product 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 incurred in accordance with clause 6.2.
1.11	<b>Cookies</b> means small files that 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.	7.4	(a) the Client or the Client's nominated carrier takes possession of the Materials/Equipment at the Contractor's address; or	11.4	The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
1.12	<b>Price</b> 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.	7.5	(b) the Contractor (or the Contractor's nominated carrier) delivers the Materials/Equipment to the Client's nominated address even if the Client is not present or the Contractor is not in possession of the Materials.	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.
2.	<b>Acceptance</b>	7.6	At the Contractor's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.	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 the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
2.1	The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works/Equipment.	8.	The Contractor may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	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 is isolated will not be re-generated until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.
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.	8.1	<b>Risk</b>	11.8	Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being 'Safe Working on Low Voltage Electrical 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 and such additional charges may be applicable to the Client.
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.		(a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery.	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" with meeting 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.
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 by the Contractor.	8.2	(b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contractor works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.		
2.5	In the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.		Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.		
2.6	In the event that the Client requests the Contractor to:	8.3	The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event of any other information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.		
	(a) make an emergency call-out for critical equipment after hours or causes the Contractor to cancel or reschedule other work then the Contractor reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between the Contractor and the Client; and	8.4	The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, metal boxes, chain switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) the Contractor reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay the Works (in accordance with clause 7.2) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.		
2.7	(b) 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.		The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, metal boxes, chain switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) the Contractor reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay the Works (in accordance with clause 7.2) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.		
2.8	If the Contractor has been requested by the Client to diagnose a fault that requires investigation, diagnosis and repair, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.	8.5	In the event that the electrical wiring is required to be re-positioned at the request of a third party contracted by the Client then the Client agrees to notify the Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variations shall be invoiced in accordance with clause 6.2.		
2.9	Electronic signatures shall not 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.	8.6	Where the Contractor gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the Site for the installation of the Materials or similar works or such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any advice or recommendations are given to the Client.		
3.	<b>Authorised Representatives</b>	8.7	The Client acknowledges and accepts that:		
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 services and any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Works/Equipment or variation's requested thereto by the Client's duly authorised representative.		(a) where the Contractor has performed temporary repairs that:		
4.	<b>Errors and Omissions</b>		(i) the Contractor offers no guarantee against the recurrence of the initial fault, or any further damage caused; and		
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):		(ii) the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required; and		
	(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or		(b) the Contractor is only responsible for components that are replaced by the Contractor and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the fault of the Client or the Contractor;		
4.2	(b) contained in omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.		(c) the Contractor shall not be responsible or liable for any defect in other appliances or power points as a coincidence of the Contractor installing the Materials, and		
5.	<b>Change in Control</b>		(d) any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which the Contractor's Materials are installed or connected to, or by workmanship performed by the Contractor, shall not be covered by any applicable warranty pertaining to the Materials; and		
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.		(e) it is the Client's responsibility to insure any equipment partly or completely installed on the Site, against theft or damage; and		
6.	<b>Price and Payment</b>		(f) the Contractor shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of the Contractor (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which the Contractor may have to break into or disturb in performance of the Works), unless due to the negligence of the Contractor; and		
6.1	At the Contractor's sole discretion the Price shall be either:		(g) under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos or other hazardous material is discovered on the Site:		
	(a) as indicated on the quotation provided by the Contractor to the Client in respect of Works performed or Materials/Equipment supplied; or		(i) the Contractor shall suspend the Works; and		
	(b) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.		(ii) the Contractor shall be fully responsible for the resolution of any resulting problems; and		
6.2	The Contractor reserves the right to change the Price:		(iii) any additional cost incurred by the Contractor shall be added to the Price under clause 6.2; and		
	(a) if a variation to the Materials which are to be supplied is requested; or		(h) Materials supplied may:		
	(b) if a variation to the Works/Equipment originally scheduled (including any applicable plans or specifications) is requested; or		(i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Contractor will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in the event that such variations occur; and		
6.3	where additional Works are required due to the discovery of hidden or unidentifiable 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 building code, hard rock or other barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or		(ii) expand, contract or distort as a result of exposure to heat, cold, weather; and		
	(d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.		(iii) be stained or disfigured by impact or scratching.		
6.4	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.		Where the Contractor requires that Materials, tools etc. required for the Works be stored at the Client's site, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.		
6.5	At the Contractor's sole discretion a deposit may be required.	8.8	<b>Access</b>		
	Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:	9.	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 concreted or paved or grassed areas), unless due to the negligence of the Contractor.		
	(a) on delivery of the Materials/Equipment; or	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 concreted or paved or grassed areas), unless due to the negligence of the Contractor.		
	(b) on completion of the Works; or		(i) the Client's responsibility to provide the Contractor with the Site, with adequate access to available water, electricity, toilet and washing facilities as required.		
	(c) 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.	9.2			
	(d) 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;				
	(e) the date specified on any invoice or other form as the time for payment; or				
	(f) failing any notice to be provided to the Client which is seven (7) days following the date of any invoice given to the Client by the Contractor.				

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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 reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing 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-stockist 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) on the part of the Client to follow any instructions or guidelines provided by the Contractor; or

(iii) any use of any 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 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 or 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 designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.

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

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

20. **Default and Consequences of Default**

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

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

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

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

(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;

(b) the Client has exceeded any applicable credit limit provided by the Contractor;

(c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. **Cancellation**

21.1 Without prejudice to any other rights or remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notices) then the Contractor may 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 to which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced (or the Materials/Equipment are due 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 loss or damage 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-stockist 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 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 utilizes the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

(a) IP address, browser, email client type and other similar details;

(b) tracking website usage and traffic; and

(c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")

If the Client consents to the Contractor's use of Cookies on the Contractor's website and later the Client withdraws its 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, 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 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 authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.

22.5 The Client shall have the right to request (by e-mail) from the Contractor, a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information.

22.6 The Contractor will not be liable to the Client in respect of 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/complycomtop.htm>.

23. **Suspension of Works**

23.1 Where the Contract 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 claim is not paid in full by the due date for payment in accordance with clause 6.5 and any subsequent amendments or new legislation and no payment schedule has been given by the Client; or

(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or

(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and

(iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.

(b) if the Contractor suspends work, it:

(i) is not in breach of Contract; and

(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and

(iii) is entitled to an extension of time to complete the Contract; and

(iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been 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 reimbursement shall be payable by the Client as a variation to the Contract.

23.2 If pursuant to any right conferred 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 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 covenants with the Contractor as follows:

(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust or the beneficiaries of the Trust;

(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other act 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 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 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland courts of New Zealand.

26.4 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 any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.

26.8 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client.

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

27.5 No allowance 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 priority 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 without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, 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 upon and into 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, as 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/or 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 use.

(h) on 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) refund the Equipment prior to its return from hire. In the event the Equipment needs to be returned 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 nor be entitled to lend 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 Client's use of the Equipment.

30.2 The Client shall not:

(a) alter or make any additions to the Equipment including but without limitation altering, make any addition to, delete or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;

(b) exceed the recommended limits in respect of the use of the Equipment;

(c) use or carry any illegal, prohibited or dangerous substances in or on the Equipment;

(d) fix any of the Equipment in such a manner as to make it a fixture forming part of the realty.

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 cleaning 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 (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 or any pre-agreed pickup location when it was originally agreed that the Client would do so;

(iii) insurance excess payable in relation to a claim made 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: