

# Terms of Trade

## 1. Definitions

- “**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.
- “**Supplier**” means Readylawn Industries Ltd, its successors and assigns or any person acting on behalf of and with the authority of Readylawn Industries Ltd.
- “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - 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.
- “**Goods**” means all Goods or Services supplied by the Supplier to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- “**Equipment**” means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- “**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.
- “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- “**Price**” means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between the Supplier and the Client in accordance with clause 6

## **2. Acceptance**

- 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 the Goods/Equipment.
- 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.
- Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.
- In the event that the supply of Goods/Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery.
- 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.
- Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier. Where such advice or recommendations are not acted upon then the Supplier shall require the Client or their agent to authorise commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

## **3. Errors and Omissions**

- The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
  - contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
- In the event such an error and/or omission occurs in accordance with clause 1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

## **4. Authorised Representatives**

- The Client acknowledges that the Supplier shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Supplier, that person shall have the full authority of the Client to order any Services, Goods and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Services, Goods or variation/s requested thereto by the Client's duly authorised representative.

## **5. Change in Control**

- The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

## **6. Price and Payment**

- At the Supplier's sole discretion the Price shall be either:
  - as indicated on any invoice provided by the Supplier to the Client; or
  - the Supplier's quoted price (subject to clause 2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- the Supplier reserves the right to change the Price:
  - if a variation to the Goods which are to be supplied is requested; or
  - if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to site access, ready availability of Goods / Machinery, variations in quantity or volume of Goods to be supplied, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Services; or
  - in the event of increases to the Supplier in the cost of labour or Goods which are beyond the Supplier's control.
- Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

- At the Supplier's sole discretion a non-refundable deposit of Fifty (50) percent may be required.
- Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
  - on Delivery of the Goods/Equipment;
  - before Delivery of the Goods/Equipment;
  - by way of instalments/progress payments in accordance with the Supplier's payment schedule;
  - 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
  - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Supplier.
- The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Supplier is a claim made under the Construction Contracts Act 2002.
- Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## **7. Provision of the Services**

- Subject to clause 2 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
- The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client written notice) where

completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Client to:

- make a selection; or
- have the site ready for the Services; or
- notify the Supplier that the site is ready.
- Delivery (“**Delivery**”) of the Goods/Equipment is taken to occur at the time that:
  - the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or
  - the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- At the Supplier's sole discretion the cost of Delivery is in addition to the Price.
- The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- Any time specified by the Supplier for delivery of the Goods/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late (being within a reasonable timeframe but prior to the Goods being unusable). However both parties agree that they shall make every endeavour to enable the Goods/Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Goods/Equipment at a later time and date.

## 8. Risk

- Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- The Client warrants that the structure of the premises or in or upon which these Goods are to be installed is sound and will sustain the installation and Services incidental thereto and the Supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises be unable to accommodate the installation.
- The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the Goods and shall take all reasonable precautions to protect against destruction or damage by way of

- vandalism. In the event that the Goods are destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- the Supplier shall advise the Client if the Supplier believes that there are any issues with the sub surface (including, but not limited to, poor drainage, tree roots) however the Client acknowledges that it is not always possible to identify such problems therefore the Client agrees that the Supplier shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Services.
  - Whilst the Supplier shall make all reasonable effort to ensure the Goods are suitable for the conditions, the Client acknowledges and accepts that the Supplier shall not be held responsible for any trees, shrubs, plants, natural turf and any other flora, foliage or vegetation that subsequently dies where the Client has failed to properly maintain the Goods and/or follow any instructions or guidelines provided by the Supplier in regard to the proper care of the Goods (including but not limited to, adequate watering, weed suppression etc.). The Supplier shall not be responsible for the maintenance and upkeep of the same once planted / installed.
  - Any damage to the surface by an outside agent is the responsibility of the Client. Any requests to the Supplier to make any repair not caused by the Supplier will be charged at the normal current rates.
  - The Client shall:
    - make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Supplier and the Client, any additional costs or losses will be invoiced to the Client as an extra;
    - be wholly responsible for the removal of rubbish from or clean-up of the worksite, unless otherwise agreed between the Supplier and the Client at the time of quotation;
    - provide the Supplier with facilities, as specified by the Supplier, (including, but not limited to, a suitable free power source) for the duration of the Services.

#### **9. Accuracy of Client's Plans and Measurements**

- The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

#### **10. Access**

- The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the Services. The Supplier 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 Supplier.
- It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, cranes or other equipment. The Client agrees to indemnify the Supplier against all costs incurred by the Supplier in recovering such vehicles in the event they become bogged or otherwise immovable.

#### **11. Compliance With Laws**

- The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- Notwithstanding clause 1 and pursuant to the Health & Safety at Work Act 2015 (the “HSW Act”) the Supplier agrees at all times to comply with sections 28 and 34 of the “HSW Act” with meeting their obligations for health and safety.

#### **12. Underground Locations**

- Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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 site.
- Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 1.

#### **13. Title to Goods**

- The Supplier and the Client agree that ownership of the Goods shall not pass until:
  - the Client has paid the Supplier all amounts owing to the Supplier; and
  - the Client has met all of its other obligations to the Supplier.
- Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

- It is further agreed that:
  - until ownership of the Goods passes to the Client in accordance with clause 1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
  - the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
  - the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
  - the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
  - the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;
  - the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier; and
  - the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

#### **14. Personal Property Securities Act 1999 ("PPSA")**

- 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 Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 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 Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change



- statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
- not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and
- immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- The Client shall unconditionally ratify any actions taken by the Supplier under clauses 1 to 14.5.
- Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 14 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 14 will apply generally for the purposes of the PPSA.

#### **15. Security and Charge**

- In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

#### **16. Defects and Returns**

- The Client shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to

inspect the Goods/Equipment within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.

- Returns of Goods will only be accepted provided that:
  - the Client has complied with the provisions of clause 1; and
  - the Supplier has agreed in writing to accept the return of the Goods; and
  - the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date; and
  - the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
  - the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- The Supplier will not accept the return of Goods for credit.

## **17. Warranty**

- Subject to the conditions of warranty set out in Clause 2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within three (3) months of the date of Delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.
- The conditions applicable to the warranty given by Clause 1 are:
  - the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - failure on the part of the Client to properly maintain any Goods; or
    - failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
    - any use of any Goods otherwise than for any application specified on a quote or order form; or
    - the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - fair wear and tear, any accident or act of God.
  - the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
  - in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not

be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

#### **18. Consumer Guarantees Act 1993**

- If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 (“CGA”) do not apply to the supply of Goods by the Supplier to the Client.

#### **19. Intellectual Property**

- Where the Supplier has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client’s order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.

#### **20. Default and Consequences of Default**

- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier’s collection agency costs, and bank dishonour fees).
- Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client’s obligations under this Contract.
- Without prejudice to the Supplier’s other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

- any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
- the Client has exceeded any applicable credit limit provided by the Supplier;
- the Client becomes insolvent, 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
- 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**

- Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/Equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- The Supplier may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- In the event that the Client cancels Delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- Cancellation of orders for Goods 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**

- All emails, documents, images or other recorded information held or used by the Supplier is Personal Information as defined and referred to in clause 3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 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 Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act 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.

- Notwithstanding clause 1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
  - IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")

If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- The Client authorises the Supplier or the Supplier's agent to:
  - access, collect, retain and use any information about the Client;
    - (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
    - for the purpose of marketing products and services to the Client.
  - disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- Where the Client is an individual the authorities under clause 3 are authorities or consents for the purposes of the Privacy Act 1993.
- The Client shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to 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/comply/comptop.html>.

### 23. Equipment Hire

- Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered the Supplier retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Supplier shall have right to charge the Client the full cost of replacing the Equipment.
- The Client shall:
  - keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
  - not alter or make any additions to the Equipment including but without limitation altering, 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;
  - keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Supplier to the Client.
- The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier 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 or persons arising out of the use 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.
- Notwithstanding the above clause, immediately on request by the Supplier the Client will pay:
  - any lost hire charges the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - any insurance excess payable in relation to a claim made by either the Client or the Supplier 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 Supplier's.
- Return of the Equipment ("**Return**") will be completed when the:
  - Equipment is returned by the Client to the Supplier's place of business; or
  - Supplier takes back possession of the Equipment once collection by the Supplier is affected.

### 24. Service of Notices

- Any written notice given under this Contract shall be deemed to have been given and received:
  - by handing the notice to the other party, in person;
  - by leaving it at the address of the other party as stated in this Contract;
  - by sending it by registered post to the address of the other party as stated in this Contract;

- 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;
- if sent by email to the other party's last known email address.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## **25. Trusts**

- 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 Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
  - the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - the Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - the removal, replacement or retirement of the Client as trustee of the Trust;
    - any alteration to or variation of the terms of the Trust;
    - any advancement or distribution of capital of the Trust; or
    - any resettlement of the trust property.

## **26. Suspension of Services**

- Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
  - the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
    - the payment is not paid in full by the due date for payment in accordance with clause 6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
    - 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
    - the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and

- the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
  - if the Supplier suspends work, it:
    - is not in breach of Contract; and
    - 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
    - is entitled to an extension of time to complete the Contract; and
    - 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.
  - if the Supplier exercises the right to suspend work, the exercise of that right does not:
    - affect any rights that would otherwise have been available to the Supplier under the Contract and Commercial Law Act 2017; or
    - enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision;
  - due to any act or omission by the Client, the Client effectively precludes the Supplier from continuing the Services or performing or complying with the Supplier's obligations under this Contract, then without prejudice to the Supplier's other rights and remedies, the Supplier may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Supplier as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- If pursuant to any right conferred by this Contract, the Supplier suspends the Services and the default that led to that suspension continues un-remedied subject to clause 1 for at least ten (10) working days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 21.

## **27. General**

- 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.
- 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 Christchurch Courts, New Zealand.



- Except to the extent permitted by law “**CGA**”, the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier’s liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client’s consent.
- The Client cannot licence or assign without the written approval of the Supplier.
- The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier’s sub-contractors without the authority of the Supplier.
- The Client agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.
- 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.
- 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.