

Superior Civil & Earthworks (BOP) Limited

Terms and Conditions of Trade

Updated 7th of July, 2025

1. Definitions

1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 “SCE” means Superior Civil & Earthworks (BOP) Limited, its successors and assigns or any person acting on behalf of and with the authority of Superior Civil & Earthworks (BOP) Limited.

1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting SCE to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:

(a) if there is more than one Client, is a reference to each Client jointly and severally; and

(b) if the Client is a partnership, it shall bind each partner jointly and severally; and

(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and

(d) includes the Client’s executors, administrators, successors and permitted assigns.

1.4 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by SCE 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).

1.5 “Worksite” means the land (or that part of the land) that SCE reasonably needs to occupy in order to carry out and practically complete the Works required under this Contract.

1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “Personal Information” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email,

Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.7 “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 ordering from the 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 ordering Works via the website.

1.8 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between SCE and the Client in accordance with clause 6 below.

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.

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

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

2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with SCE and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Works request exceeds the Clients credit limit and/or the account exceeds the payment terms, SCE reserves the right to refuse delivery.

2.6 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.

2.7 In the event that SCE is required to provide the Works urgently, that may require SCE's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then SCE reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between SCE and the Client.

3. Exclusion

3.1 Unless expressly stated by SCE, the quoted Price shall not include:

- (a) any traffic management, cramage, hoisting, scaffolding and/or safety barriers that may be required during the course of the Works;
- (b) propping, false work or any other temporary work;
- (c) engineering or other inspections required prior to and/or on completion of the Works;

3.2 In the event the Client requires any of the above, the Price will be adjusted accordingly to include the Works in accordance with clause 6.2.

4. Errors and Omissions

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

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

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of SCE;

the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

5.1 The Client shall give SCE 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 number/s or e-mail address, change of trustees, or business practice). The Client shall be liable for any loss incurred by SCE as a result of the Client's failure to comply with this clause.

6. Price and Payment

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

(a) as indicated on invoices provided by SCE to the Client in respect of Works performed or Materials supplied; or

(b) SCE's quoted Price (subject to clause 6.2) which shall be binding upon SCE provided that the Client shall accept SCE's quotation in writing within thirty (30) days.

6.2 SCE reserves the right to change the Price:

(a) if a variation to the Materials which are to be supplied is requested; or

(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Worksite, availability of machinery, safety considerations and/or health hazards, latent soil conditions, obscured Worksite defects which require remedial work, prerequisite work by any third party that has not been completed or is of a substandard condition, hard rock barriers below the surface, hidden/unmarked underground locations (as per clause 11.1(e)(i)), etc.) etc.) which are only discovered on commencement of the Works; or

(d) in the event of increases to SCE in the cost of labour or materials which are beyond SCE's control.

6.3 Variations will be charged for on the basis of SCE's quotation, and will be detailed in writing, and shown as variations on SCE's invoice. The Client shall be required to respond to any variation submitted by SCE within ten (10) working days. Failure to do so will entitle SCE to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

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

6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by SCE, which may be:

(a) by way of progress payments in accordance with SCE's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed;

(b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted and/or emailed to the Client's address or address for notices;

(c) the date specified on any invoice or other form as being the date for payment; or

(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SCE.

6.6 Payment may be made electronic/on-line banking, or by any other method as agreed to between the Client and SCE.

6.7 SCE may in its discretion allocate any payment received from the Client towards any invoice that SCE determines and may do so at the time of receipt or at any time afterwards. On any default by the Client SCE may re-allocate any payments previously received and allocated. In the absence of any payment allocation by SCE, payment will be deemed to be allocated in such manner as preserves the maximum value of SCE's Purchase Money Security Interest (as defined in the PPSA) in the Materials.

6.8 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 SCE nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by SCE is a claim made under the Construction Contracts Act 2002.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to SCE an amount equal to any GST SCE must pay for any supply by SCE under this or any other agreement for the sale of the Materials. 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. Retention Monies

7.1 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 time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18(a) to 18(i) of the Construction Contracts Act 2002.

7.2 Any Retention Monies applicable to this Contract are to be dealt with in accordance with section 18 (a) to 18 (i) of the Construction Contracts Act 2002, as detailed below:

(a) all Retention Money must be held on trust by the Client, as trustee, for the benefit of the SCE;

(b) Retention Money may be held in the form of cash or other liquid assets that are readily converted into cash; and

(c) a trust over Retention Money ends when:

(i) the money is paid to the SCE; or

(ii) the SCE, in writing, agrees to give up any claim to the money; or

(iii) the money ceases to be payable to the SCE under the Contract or otherwise by operation of law.

(d) accounting:

(i) the Client must keep proper accounting records of all Retention Money held that:

(A) correctly records all dealings and transactions in relation to the money; and

(B) comply with generally accepted accounting principles; and

(C) are readily and properly auditable.

(e) the Client must make accounting records of the Retention Money available for inspection by the SCE at all reasonable times and without charge;

(f) regulations may further prescribe methods of accounting for Retention Money;

(g) use of Retention Money:

(i) the Client must not appropriate any Retention Money to a use other than to remedy defects in the performance of the SCE's obligations under the Contract;

(ii) Retention Money held in trust by the Client:

(A) does not need to be paid into a separate trust account; and

(B) may be commingled with other moneys.

(h) investment of Retention Money:

(i) Retention Money may be invested by the Client in accordance with the Trustee Act 1956 in relation to investment of trust funds;

(ii) if, upon the realisation of any investment, the amount received is:

(A) less than the amount invested, the Client must make up the difference between the amount invested and the amount realised;
or

(B) more than the amount invested, the Client may retain the benefit of the amount that exceeds the amount invested; or

(C) the Client may retain the benefit of any interest earned on Retention Money on or before the date on which it is payable under the Contract.

(i) interest on late payment:

(i) interest on Retention Money is payable to the SCE from the date on which it is payable under the Contract until the date on which it is paid;

(ii) the interest referred to in sub-clause (i) is payable:

(A) at the rate agreed under the Contract; or

(B) if the parties have not agreed a rate under the Contract, at the rate or rates prescribed in the applicable regulations.

(j) protection of Retention Money:

7.3 Retention Money:

(i) is not available for the payment of debts of any creditor of the Client (other than the SCE); and

(ii) is not liable to be attached or taken in execution under the order or process of any court at the instance of any creditor of the Client (other than the SCE).

(b) prohibited provisions

(i) any term in a construction contract is void that purports to—

(A) make the payment of retention money conditional on anything other than the performance of the SCE's obligations under the Contract; or

(B) make the date on which payment of retention money is payable later than the date on which the SCE has performed all of its obligations under the Contract to the standard agreed under the Contract; or

(C) require the SCE to pay any fees or costs for administering a trust under this sub-clause.

(ii) any provision in a construction contract is void if the purpose or one of the purposes, of the provision is to avoid the application of any of the provisions of this sub-clause.

8. Provision of the Works

8.1 Subject to clause 8.2 it is SCE's responsibility to ensure that the Works start as soon as it is reasonably possible.

8.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that SCE claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond SCE's control, including but not limited to any failure by the Client to:

- (a) make a selection; or
- (b) have the Worksite ready for the Works; or
- (c) notify SCE that the Worksite is ready.

8.3 SCE may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

8.4 Any time specified by SCE for delivery of the Works is an estimate only and SCE will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that SCE is unable to supply the Works as agreed solely due to any action or inaction of the Client, then SCE shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

9. Access

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

9.2 It is the responsibility of the Client to ensure that such access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by SCE. The Client agrees to indemnify SCE against all costs incurred by SCE in recovering such vehicles in the event they become bogged or otherwise immovable.

10. Risk

10.1 If SCE retains ownership of the Materials under clause 14.1 then:

(a) where SCE is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;

(i) the Client or the Client's nominated carrier takes possession of the Materials at SCE's address; or

(ii) the Materials are delivered by SCE or SCE's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

(b) where SCE is to both supply and install Materials then SCE shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests SCE to leave Materials outside SCE's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.

10.3 Where SCE gives advice or recommendations to the Client, or the Client's agent:

(a) with specific instructions regarding the suitability of the Worksite for the laying of concrete or similar works and such advice or recommendations are not acted upon then SCE shall require the Client or their agent to authorise commencement of the Works in writing. SCE shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works; and

(b) such advice, recommendation, information, assistance or service provided by SCE in relation to Works provided is given in good faith, is based on SCE's own knowledge and experience and shall be accepted without liability on the part of SCE. It shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Works.

10.4 SCE 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, SCE accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

10.5 The Client warrants that the Worksite and/or any structures upon which these Materials are to be poured is sound and will sustain the installation and work incidental thereto and SCE shall not be liable for any claims, demands, losses, damages, costs and/or expenses howsoever caused or arising should the Worksite/structure be unable to accommodate the installation.

10.6 Where the Client has supplied products for SCE to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the products. SCE shall not be responsible for any defects in the Works, any loss or damage to the products (or any part thereof), howsoever arising from the use of products supplied by the Client.

10.7 The Client agrees to indemnify SCE from any damage caused by any other tradesman during and after the completion of the Works. If the Client instructs SCE to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at SCE normal hourly rate.

11. Client's Responsibilities

11.1 It is the intention of SCE and agreed by the Client that it is the responsibility (where applicable) to ensure that, prior to commencement of the Works by SCE:

(a) all gas and electricity are cancelled and disconnected (from the main supply at the street); and

(b) a safety fence is erected around the perimeter of the Worksite to ensure public safety; and

(c) provide crange, hoisting and have erected scaffolding to enable the Works to be undertaken (where in SCE's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding and/or operating any crane or hoisting equipment shall be suitably qualified to ensure its safe and proper erection and use and where necessary shall hold a current certificate of competency and/or be fully licensed; and

(d) remove any items from the vicinity of the Works and agrees that SCE shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and provide SCE while at the Worksite with adequate access to any amenities (including but not limited to water, electricity, temporary lighting, toilet and washing facilities, etc.) that may be required during the provision of the Works; and

(e) the Client must advise SCE of the precise location of all underground services on the Worksite and clearly mark the same:

(i) 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 the Worksite;

(ii) whilst SCE will take all care to avoid damage to any underground services the Client agrees to indemnify SCE 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 11.1(e)(i).

12. Compliance with Laws

12.1 The Client and SCE 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 to building/construction sites and any other relevant safety standards or legislation.

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

12.3 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the “HSW Act”) SCE agrees at all times comply with sections 28 and 34 of the “HSW Act” with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

(a) Where SCE is engaged as a third party contractor by the Client to perform Works subject to the Construction Contracts Act 2002 then the Client shall be the party responsible to ensure that all the appropriate paperwork is completed with the owner where the Contract sum is over the threshold of thirty thousand dollars (\$30,000) and that all relevant disclosures are effected in line with this legislation

13. Insurance

13.1 SCE shall effect and maintain the following insurances in connection with this provision of SCE’s Works:

- (a) Public Liability Insurance (\$10m);
- (b) Contract Works Insurance (\$130k), if applicable;
- (c) Professional Indemnity Insurance (\$1m).

13.2 SCE shall arrange (a) and (c) with an insurance company/broker of their choice and it is the Client’s responsibility to ensure that they are similarly insured.

13.3 Before SCE commences work and whenever requested in writing by the Client to do so, SCE will produce evidence to the Client's satisfaction and approval of the insurance required by this clause 13 have been effected and are maintained.

13.4 SCE shall not be under any liability for any loss or damage suffered by SCE, Client (or any third party) as a result of:

(a) the Client contravening clause 12 or 13;

(b) saving, or attempting to save, life or property in peril.

13.5 Notwithstanding clauses 13.1 in the event that the Client believes that they have any claim against SCE then they must lodge any notice of claim for consideration and determination by SCE within seven (7) days of the date of completion of the Works. All claims are to be accessed by SCE's insurers, no admission of liability will be expressed in any other format other than in writing from SCE's insurer.

13.6 The liability of SCE to the Client shall expire twelve (12) months from the issue of the last invoice relevant to the particular project, unless in the meantime the Client has made a claim in writing to SCE, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.

14. Title

14.1 SCE and the Client agree that ownership of the Materials shall not pass until:

(a) the Client has paid SCE all amounts owing to SCE; and

(b) the Client has met all of its other obligations to SCE.

14.2 Receipt by SCE 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.

14.3 It is further agreed that:

(a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to SCE on request;

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for SCE and must pay to SCE the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;

(c) the production of these terms and conditions by SCE shall be sufficient evidence of SCE's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with SCE to make further enquiries;

(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for SCE and must pay or deliver the proceeds to SCE on demand;

(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SCE and must sell, dispose of or return the resulting product to SCE as it so directs;

(f) unless the Materials have become fixtures the Client irrevocably authorises SCE to enter any premises where SCE believes the Materials are kept and recover possession of the Materials;

(g) SCE may recover possession of any Materials in transit whether or not delivery has occurred;

(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of SCE;

(i) SCE may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

15. Personal Property Securities Act 1999 ("PPSA")

15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to SCE for Works – that have previously been supplied and that will be supplied in the future by SCE to the Client.

15.2 The Client undertakes to:

(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SCE may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

(b) indemnify, and upon demand reimburse, SCE for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of SCE; and

(d) immediately advise SCE of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.

15.3 SCE and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

15.5 Unless otherwise agreed to in writing by SCE, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

15.6 The Client shall unconditionally ratify any actions taken by SCE under clauses 16.1 to 16.4.

15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

16.1 In consideration of SCE agreeing to supply the Works, 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).

16.2 The Client indemnifies SCE from and against all SCE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SCE's rights under this clause.

16.3 The Client irrevocably appoints SCE and each director of SCE as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

16.4 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Defects, Returns & Warranties

17.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify SCE of any alleged defect,

shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford SCE an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which SCE has agreed in writing that the Client is entitled to reject, SCE's liability is limited to either (at SCE's discretion) replacing the Materials or repairing the Materials.

17.2 Materials will not be accepted for return other than in accordance with 17.1 above.

17.3 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

17.4 For Materials not manufactured by SCE, the warranty shall be the current warranty provided by the manufacturer of the Materials. SCE 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 Materials.

17.5 To the extent permitted by statute, no warranty is given by SCE as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. SCE shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

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 SCE to the Client.

19. Intellectual Property

19.1 The Client agrees that SCE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which SCE 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 SCE'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 SCE any money the Client shall indemnify SCE from and against all costs and disbursements incurred by SCE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SCE's collection agency costs, and bank dishonour fees).

20.3 Further to any other rights or remedies SCE may have under this Contract, if a Client has made payment to SCE, 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 SCE 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 SCE's other remedies at law SCE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SCE shall, whether or not due for payment, become immediately payable if:

(a) any money payable to SCE becomes overdue, or in SCE'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 SCE;

(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 SCE may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10)

working days of receipt by the Client of such notice/s) then SCE may suspend the Works immediately. SCE will not be liable to the Client for any loss or damage the Client suffers because SCE has exercised its rights under this clause.

21.2 SCE may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice SCE shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to SCE for Works already performed. SCE 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 the Client shall be liable for any and all loss incurred (whether direct or indirect) by SCE as a direct result of the cancellation (including, but not limited to, any loss of profits).

21.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will 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 SCE is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. SCE 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" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). SCE acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by SCE that may result in serious harm to the Client, SCE 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 SCE in respect of Cookies where transactions for purchases/orders transpire directly from SCE's website. SCE 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 SCE when SCE sends an email to the Client, so SCE may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via SCE's website.

22.3 The Client authorises SCE or SCE'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 SCE from the Client directly or obtained by SCE 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 SCE for a copy of the Personal Information about the Client retained by SCE and the right to request SCE to correct any incorrect Personal Information about the Client held by SCE.

23. Suspension of Works

23.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:

(a) SCE has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:

(i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or

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

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

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

(b) if SCE 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 SCE exercises the right to suspend work, the exercise of that right does not:

(i) affect any rights that would otherwise have been available to SCE 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 SCE suspending work under this provision;

(d) due to any act or omission by the Client, the Client effectively precludes SCE from continuing the Works or performing or complying with SCE's obligations under this Contract, then without prejudice to SCE's other rights and remedies, SCE 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 SCE as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

23.2 If pursuant to any right conferred by this Contract, SCE 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, SCE shall be entitled to terminate the Contract, in accordance with clause 20.

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 email to the other party's last known email address.

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

25. Trusts

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

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

(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

(c) the Client will not without consent in writing of SCE (SCE will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:

- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

26. General

26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with 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 Tauranga District Courts of New Zealand.

26.4 SCE 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 SCE of these terms and conditions (alternatively SCE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

26.5 SCE 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 SCE.

26.7 SCE 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 SCE's sub-contractors without the authority of SCE.

26.8 The Client agrees that SCE 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 SCE 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.