

1. **Warranty**
2. **Definitions**
 - 2.1 “**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.
 - 2.2 “**Seller**” means JAG Kitchens Limited, its successors and assigns or any person acting on behalf of and with the authority of JAG Kitchens Limited.
 - 2.3 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
 - 2.4 “**Goods**” means all Goods or Services supplied by the Seller 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).
 - 2.5 “**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.
 - 2.6 “**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 Seller’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.**
 - 2.7 “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 7 below.
3. **Acceptance**
 - 3.1 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 the Goods.
 - 3.2 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.
 - 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
 - 3.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Seller and it has been approved with a credit limit established for the account.
 - 3.5 In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse Delivery.
 - 3.6 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.
4. **Errors and Omissions**
 - 4.1 The Client acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
 - 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 wilful misconduct of the Seller; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
5. **Authorised Representatives**
 - 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to the Seller as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Seller in writing that said person is no longer the Client’s duly authorised representative).
 - 5.2 In the event that the Client’s duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
 - 5.3 The Client specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller’ profit margin) in providing any Services, Goods, Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).
6. **Change in Control**
 - 6.1 The Client shall give the Seller 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client’s failure to comply with this clause.
7. **Price and Payment**

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- 7.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Client; or
 - (b) the Seller's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 The Seller reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, prerequisite work by any third party not being completed, obscured building defects, change of design or colour, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.
- 7.3 At the Seller's sole discretion a non-refundable deposit may be required.
- 7.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with the Seller's payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
- 7.5 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and the Seller.
- 7.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller 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.
- 8. Delivery of Goods**
- 8.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
 - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 Any Goods made to the Client's specifications must be delivered (as defined in clause 8.1) within seven (7) days of completion of the Goods.
- 8.3 At the Seller's sole discretion the cost of delivery is included in the Price.
- 8.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.5 Subject to clause 8.6 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.6 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify the Seller that the site is ready.
- 8.7 Any time or date given by the Seller to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 9. Risk**
- 9.1 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.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 9.3 If the Client requests the Seller to leave Goods outside the Seller'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.
- 9.4 The Client acknowledges that Goods (including but not limited to paint, timber, granite, tiles & concrete) supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 9.5 The Seller will make every effort to match batches of product supplied in order to minimise variations in colour, shade, texture and the like, but shall not be liable in any way whatsoever where such variations occur.
- 9.6 Where the Seller is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 9.7 Where the Client has supplied materials for the Seller to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Seller shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.

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- 9.8 Where the Client requests the re-use of existing materials or the supply of third-party materials (including, but not limited to, granite or stainless steel bench tops, appliances, and/or sinks), no responsibility shall be taken by the Seller for the appearance, service or performance of the materials.
- 9.9 Where the contract does not include installation of Goods by the Seller, the Seller shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 9.10 Unless otherwise specified by the Seller in writing, the removal and replacement of wall tile is limited to utilising the existing wall surfaces. If replacement, relining or excessive repair work of the wall is required, the Seller may charge the Client the cost to the Seller in doing such Services plus twenty percent (20%).
- 10. Accuracy of Client's Plans and Measurements**
- 10.1 The Seller 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 Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 10.2 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 Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 11. Access**
- 11.1 The Client shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the Services. The Seller 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 Seller.
- 12. Hidden Services**
- 12.1 Prior to the Seller commencing any work the Client must advise the Seller 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.
- 12.2 Whilst the Seller will take all care to avoid damage to any underground services the Client agrees to indemnify the Seller 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 12.2.
- 13. Compliance with Laws**
- 13.1 The Client and the Seller 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.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 14. Title**
- 14.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Seller all amounts owing to the Seller; and
 - (b) the Client has met all of its other obligations to the Seller.
- 14.2 Receipt by the Seller 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 until ownership of the Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) 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 Seller and must pay or deliver the proceeds to the Seller on demand;
 - (d) 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 Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
 - (e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
 - (f) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) 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 Seller; and
 - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods 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 Goods and/or collateral (account) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- 15.2 The Client undertakes to:

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- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and
 - (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.3 The Seller 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 the Seller, 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 the Seller under clauses 15.1 to 15.5.
- 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 the Seller agreeing to supply the Goods, 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 the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 16.3 The Client irrevocably appoints the Seller and each director of the Seller 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.
- 17. Defects**
- 17.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
- 18. Returns**
- 18.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) the Seller has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) the Goods have been installed by an authorised and/or suitably qualified installer; and
 - (e) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (f) 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.
- 18.2 Returned Goods may (at the Seller's sole discretion), incur restocking and handling fees.
- 18.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 19. Warranty**
- 19.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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.
- 19.2 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 19.3 Warranty shall not be supplied where full payment has not been received, unless agreed in writing by Seller.
- 20. Consumer Guarantees Act 1993**
- 20.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("**CGA**") do not apply to the supply of Goods by the Seller to the Client.
- 21. Intellectual Property**
- 21.1 Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 21.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 21.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.

22. Default and Consequences of Default

- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies the Seller may have under this Contract, if a Client has made payment to the Seller, 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 Seller under this clause 22 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.
- 22.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Seller;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Cancellation

- 23.1 Without prejudice to any other remedies the Seller 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 Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 23.2 The Seller may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.4 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.

24. Dispute Resolution

- 24.1 All disputes and differences between the Client and the Seller touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

25. Privacy Policy

- 25.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information as defined and referred to in clause 25.3 and therefore considered confidential. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 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 Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Seller that may result in serious harm to the Client, the Seller 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.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to the Seller in respect of Cookies where the Client utilises the Seller's website to make enquiries. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Seller when the Seller sends an email to the Client, so the Seller may collect and review that information ("collectively Personal Information")
- If the Client consents to the Seller's use of Cookies on the Seller's website and later wishes to withdraw that consent, the Client may manage and control the Seller's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 25.3 The Client authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller 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.
- 25.4 Where the Client is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 2020.

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- 25.5 The Client shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Client retained by the Seller and the right to request that the Seller correct any incorrect Personal Information.
- 25.6 The Seller 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.
- 25.7 The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller 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>.

26. Suspension of Services

- 26.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
- (i) the payment is not paid in full by the due date for payment in accordance with clause 7 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
 - (iv) the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if the Supplier suspends work, it:
- (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Supplier exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Supplier under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes the Supplier from continuing the Services or performing or complying with the Supplier's obligations under this Contract, then without prejudice to the Supplier's other rights and remedies, the Supplier may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Supplier as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 26.2 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 23.1 for at least ten (10) working days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 23.

27. General

- 27.1 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.
- 27.2 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 courts of New Zealand.
- 27.3 Except to the extent permitted by law "CGA", the Seller 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 Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.5 The Client cannot licence or assign without the written approval of the Seller.
- 27.6 The Seller 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 Seller's sub-contractors without the authority of the Seller.
- 27.7 The Client agrees that the Seller 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 Seller to provide Goods to the Client.
- 27.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 27.9 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.