

1. Definitions

- 1.1 “Seller” means Tebbutt Plumbing Limited T/A Tebbutt Plumbing, its successors and assigns or any person acting on behalf of and with the authority of Tebbutt Plumbing Limited T/A Tebbutt Plumbing.
- 1.2 “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally (where the context so permits, the term ‘Customer’ shall also mean the Customer’s duly authorised representative).
- 1.3 “Works” means all Works, Materials or Parts supplied by the Seller to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’, ‘Materials’ or ‘Parts’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between the Seller and the Customer in accordance with clause 6 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 The Customer accepts and acknowledges that:
 - (a) a minimum call out fee applies for any Works performed by the Seller. Such call-out fee shall be equal to one (1) hour of labour at the Seller’s standard hourly labour rate, plus any Parts or Materials; and
 - (b) a booking fee may apply, at the Seller’s sole discretion which shall be advised at the time of quotation.
- 2.4 Where the Customer is a tenant (and therefore not the owner of the land/premises where the Works are to be undertaken), the Customer warrants that full consent has been obtained from the owner for the Seller to carry out the Works. The Customer acknowledges and agrees that they shall be personally liable for full payment of the Price for all Works provided under this agreement and to indemnify the Seller against any claim made by the owner of the land/premises (howsoever arising) in relation to the provision of the Works by the Seller; except where such claim has arisen because of the negligence of the Seller.
- 2.5 The Customer agrees that they shall upon request from the Seller provide evidence that:
 - (a) they are the owner of the land/premises upon which the Works are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Works to be undertaken.

3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

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

5. Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2, the Customer agrees that should the Customer introduce any third party to the Seller as the Customer’s duly authorised representative, that once introduced, that person shall have the full authority of the Customer to order any Works, and/or to request any variation thereto, on the Customer’s behalf (such authority to continue until all requested Parts have been delivered, or the Customer otherwise notifies Seller in writing that said person is no longer the Customer’s duly authorised representative).
- 5.2 In the event that the Customer’s duly authorised representative, as per clause 5.1, is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller’s profit margin) in providing any Works, or variation/s thereto, requested by the Customer’s duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. Price and Payment

- 6.1 At the Seller’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Customer in respect of Works performed or Materials supplied; or
 - (b) the Seller’s Price at the date of delivery of the Works according to the Seller’s current pricelist; or
 - (c) the Seller’s quoted Price (subject to clause 6.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller’s quotation in writing within fourteen (14) days.
- 6.2 The Seller 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
 - (d) where unforeseen circumstances occur and/or additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, limitations to accessing the site, inclement weather, obscured/latent defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos or other toxic substances), prerequisite work by any third party not being completed substantially or at all, change of design, hidden pipes/cablings etc.) which are only discovered on commencement of the Works; or
 - (e) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller’s control.

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- 6.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Seller's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with the Seller'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;
 - (c) for certain approved Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer'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 Customer by the Seller.
- 6.6 Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Seller.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer 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 Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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. Delivery of the Works

- 7.1 At the Seller's sole discretion, the cost of delivery is in addition to the price.
- 7.2 Subject to clause 7.3 it is the Seller's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.3 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify the Seller that the site is ready.
- 7.4 The Seller 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.
- 7.5 Any time specified by the Seller for delivery of the Works is an estimate only and the Seller will not be liable for any loss or damage incurred by the Customer 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 the Seller is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then the Seller shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date.

8. Risk

- 8.1 If the Seller retains ownership of the Materials under clause 14 then:
- (a) where the Seller is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer 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 Customer or the Customer's nominated carrier takes possession of the Materials at the Seller's address; or
 - (ii) the Materials are delivered by the Seller or the Seller's nominated carrier, to the Customer's nominated delivery address (even if the Customer is not present at the address).
- 8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests the Seller to leave Materials outside the Seller'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 Customer and it shall be the Customer'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 Customer's expense.
- 8.3 Notwithstanding the provisions of clause 8.1, where the Seller requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the Site, the Customer shall supply the Seller a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 8.4 The Seller is only responsible for components that are replaced by the Seller and does not at any stage accept any liability in respect of previous Materials and/or services supplied by any other third party that subsequently fail and found to be the source of the failure.
- 8.5 The Customer acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Seller reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases the Seller will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order on hold until such time as the Seller and the Customer agree to such changes.
- 8.6 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the

Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

- 8.7 Where the Customer has supplied Materials for the Seller to complete the Works, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those Materials. The Seller shall not be responsible for any defects in the materials, any loss or damage to the Works or the Customer's property (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 8.8 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Seller's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller.
- 8.9 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing and/or electrical connections (including, but not limited to, pipes, couplings and valves, meter boxes, main switches, circuit breakers and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing and/or wiring, or dangerous access to crawl spaces or the roof) that the Seller, or the Seller's employees, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then the Seller shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 7.3 above) until the Seller is satisfied that it is safe for the installation to proceed.
- 8.10 The Customer acknowledges and accepts that the Seller takes no responsibility for plumbing Works completed by the Seller where the Customer property does not have limiting valves installed and/or where the pressure is either greater or lower than the installed connections are rated for.

9. Customer Acknowledgements

9.1 The Customer acknowledges that:

- (a) choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, the Seller cannot give any guarantee against reoccurrence or further damage. Blockages also occur due to disposal of sanitary hygiene products and foreign objects in sewer lines. If the Seller's equipment becomes lodged in the faulty drain it will be removed at the Customer's expense. In the event of collapse during the pipe clearing process, the Seller will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work;
- (b) in the event asbestos or any other toxic substances are discovered at the site that it is the Customer's responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Seller against any costs incurred by the Seller as a consequence of such discovery. Under no circumstances will the Seller handle removal of asbestos product;
- (c) no other tradesmen interfere with any Works and/or Materials supplied under this contract;
- (d) they shall not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party;
- (e) they are responsible for any building work, waterproofing, tiling, painting, plastering, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable the Seller to carry out the Works;
- (f) they shall provide and have erected scaffolding to enable the Works to be undertaken (where in the Seller's opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed;
- (g) they shall be responsible for ensuring that the Materials ordered are suitable for their intended use;
- (h) the Seller shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where the Customer has failed to comply with this clause 9.1.

9.2 The Customer further acknowledges that they shall:

- (a) remove any furniture or personal items from the vicinity of the Works, and agrees that the Seller shall not be liable for any damage caused to those items through the Customers failure to comply with this clause;
- (b) be wholly responsible for animals and/or children on the worksite;
- (c) be wholly responsible for the removal of rubbish from or clean-up of the worksite;
- (d) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required;
- (e) comply with the Seller's health and safety policy and procedures throughout the duration of the Works.

10. Roofing & Waterproofing Risk

- 10.1 All potential roofing Works and waterproofing surfaces are subject to an inspection by the Seller prior to the commencement of the Works.
- 10.2 Where any sealing and/or patchwork Works have been undertaken by the Seller, the Seller shall not be liable for any loss or damage to or arising from the Works (or any part thereof) howsoever arising and the Customer acknowledges and accepts that the Seller cannot give any guarantee against reoccurrence or further damage.

11. Access

- 11.1 The Customer shall ensure that the Seller has clear and free access to the worksite at all times to enable them to undertake the works. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to walls, floors, pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.

12. Underground Locations

- 12.1 Prior to the Seller commencing any work the Customer 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 Customer 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 Customer 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 12.1.

13. Compliance with Laws & Approvals

- 13.1 The Customer 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 works, including any WorkSafe guidelines and the Health and Safety at Work Act 2015.
- 13.2 The Seller has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, the Seller shall not be the person who controls the place of work in terms of the HSW Act.
- 13.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

14. Title

- 14.1 The Seller and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Customer 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:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 14.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Seller on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Seller and must pay to the Seller 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 the Seller shall be sufficient evidence of the Seller's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Seller to make further enquiries.
 - (d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer 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.
 - (e) the Customer should not convert or process the Materials or intermix them with other materials but if the Customer does so then the Customer 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.
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Materials are kept and recover possession of the Materials.
 - (g) the Seller may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Customer 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 the Seller.
 - (i) the Seller may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

- 15.1 Upon assenting to these terms and conditions in writing the Customer 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 Customer to the Seller for Works – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 15.2 The Customer 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 the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) sign 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 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 the Seller; and
 - (d) immediately advise the Seller 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 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

- 15.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 15.1 to 15.5.

16. Security and Charge

- 16.1 In consideration of the Seller agreeing to supply the Works, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer 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 Customer irrevocably appoints the Seller and each director of the Seller as the Customer'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 Customer's behalf.

17. Customer's Disclaimer

- 17.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgment.

18. Defects In Works/Materials

- 18.1 The Customer shall inspect the Works/Materials on delivery and shall within five (5) 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 Customer shall afford the Seller an opportunity to inspect the Works/Materials within a reasonable time following delivery if the Customer believes the Works/Materials are defective in any way. If the Customer shall fail to comply with these provisions the Works/Materials shall be presumed to be free from any defect or damage. For defective Works/Materials, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing or repairing the Works/Materials.
- 18.2 Materials will not be accepted for return other than in accordance with 18.1 above.
- 18.3 Non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.

19. Returns

- 19.1 Returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 18.1; and
 - (b) the Seller has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances; and
 - (e) the Seller will not be liable for Materials which have not been stored or used in a proper manner.
- 19.2 The Seller will not accept the return of non-defective Materials.

20. Warranties

- 20.1 Subject to the conditions of warranty set out in clause 20.3 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.
- 20.2 Notwithstanding clause 20.1, the Seller offers no warranty whatsoever:
 - (a) for any roofing Works undertaken by the Seller;
 - (b) on any Customer supplied Materials and/or any Works undertaken using Customer supplied Materials.
- 20.3 The conditions applicable to the warranty given by clause 20.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Materials; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Seller; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
 - (c) in respect of all claims the Seller shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 20.4 For Materials not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Materials. 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 Materials.
- 20.5 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
- 20.6 In the case of second hand Materials, the Customer acknowledges that it has had full opportunity to inspect the same and accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any

purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

21. Consumer Guarantees Act 1993

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

22. Intellectual Property

22.1 Where the Seller has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.

22.2 The Customer 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 Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

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

23. Default and Consequences of Default

23.1 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.

23.2 If the Customer owes the Seller any money the Customer 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).

23.3 Further to any other rights or remedies the Seller may have under this contract, if a Customer has made payment to the Seller, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 23, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

23.4 Without prejudice to any other remedies the Seller may have, if at any time the Customer 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 Works to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.

23.5 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 Customer 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 Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by the Seller;
- (c) the Customer 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 Customer or any asset of the Customer.

24. Cancellation

24.1 Without prejudice to any other remedies the Seller may have, if at any time the Customer 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 Works to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.

24.2 The Seller 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 Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Seller for Works already performed. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

24.3 In the event that the Customer cancels the delivery of Works the Customer 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).

24.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

25. Construction Contracts Act 2002

25.1 The Customer hereby expressly acknowledges that:

- (a) the Seller 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 Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Seller by a particular date; and
 - (iv) the Seller has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.

- (b) if the Seller 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 Customer or by any person claiming through the Customer; 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 Seller 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 Seller under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Seller suspending work under this provision.
- 25.2 The parties agree that for the purposes of the Construction Contracts Act 2002 where the Seller is a commercial provider this contract is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this contract shall be in no way limited by any contract that the Customer may have entered into with a third party in relation to the supply of Works and/or Materials to that third party or the payment by the third party to the Customer of any monies whether by progress payments or otherwise.
- 26. Privacy Act 1993**
- 26.1 The Customer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Seller from the Customer 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 Customer.
- 26.2 Where the Customer is an individual the authorities under clause 26.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 26.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.
- 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 Auckland Courts of New Zealand.
- 27.3 The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer 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 Works).
- 27.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). The Seller 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 Owner 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.
- 27.5 The Customer agrees that the Seller may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Works to the Customer.
- 27.6 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.
- 27.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.