

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (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.
- 1.2 **“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.
- 1.3 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.4 **“Goods”** means all Goods or Services supplied by the Supplier to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 6 below.
- 1.6 **“Supplier”** means QC Engineering (Hawkes Bay) Limited, its successors and assigns.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
 - (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods or Services.
- 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 and accepts that:
 - (a) the supply of Goods or Services on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods or Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery; and
 - (c) requests for material certifications, quality documents, welding certificates, coating certifications etc, must be at the time of order or by mutual agreement and maybe shown as a variation to the Price in accordance with clause 6.2.
- 2.5 Any advice, recommendation, information, assistance, or service provided by the Supplier in relation to Goods or Services supplied is given in good faith to the Client, or the Client’s agent and is based on the Supplier’s own knowledge and experience and shall be accepted without liability on the part of the Supplier. Where such advice or recommendations are not acted upon then the Supplier shall require the Client or their agent to authorise commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 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.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Supplier 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 Supplier in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier’s profit margin) in providing any Goods, Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Supplier 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 Supplier in respect of the Services.
- 4.2 If 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 Supplier; the Client:
 - (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
 - (b) shall not be responsible for any additional costs incurred by the Supplier arising from the error or omission.

5. Change in Control

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

6. Price and Payment

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

- (a) as indicated on any invoice provided by the Supplier to the Client; or
- (b) the Supplier's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2 The Supplier reserves the right to change the Price:

- (a) if a variation to the Goods which are to be supplied is requested; or
- (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, change of design, change in the scope of Services required, etc.) which are only discovered on commencement of the Services; or
- (c) in the event of increases to the Supplier in the cost of Goods and/or Services (including, but not limited to, variations in foreign currency rates of exchange, steel prices, labour costs, freight costs, insurance costs etc.).

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

6.4 At the Supplier's sole discretion a reasonable non-refundable deposit may be required.

6.5 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 Supplier, which may be:

- (a) on completion of the Services;
- (b) by way of instalments/progress payments in accordance with the Supplier'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 Supplier.

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

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

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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

7.1 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 Supplier's address; or
- (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- (c) address.

7.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.

7.3 The Supplier 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.

7.4 Any time specified by the Supplier for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late.

8. Risk

8.1 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.

8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

8.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

8.4 Detailed drawings of any Services that will be embedded in the Goods are to be provided to the Supplier prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by the Supplier for damage to the services or any other element embedded in the Goods.

8.5 Whilst the Supplier will make every effort to accomplish an acceptable finish, the Client acknowledges that:

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- (a) any surfaces that run up against each other or are in close proximity leading to crevices will hinder the application of the powder and the Supplier cannot guarantee full coverage;
 - (b) sharp edges are difficult to cover to the full thickness of coating and accepts that lack of full coverage may occur; and
 - (c) porosity in a weld or welding spatter or existing imperfections in the steel can affect the quality of coating finish and coverage.
- 8.6 The Client acknowledges and agrees that:
- (a) where the Supplier have performed temporary repairs or welding of joins or metal tears, that:
 - (i) the Supplier offers no guarantee against the reoccurrence of the initial fault, or any further damage caused;
 - (ii) the Supplier will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair; and
 - (iii) the Supplier shall not be held liable for any losses or damages resulting from the remedial welding put under excessive or inappropriate strain.
 - (b) it is their responsibility to organise and be liable for all costs associated with protecting the Goods and shall take all reasonable precautions to protect against destruction or damage howsoever caused. In the event that the Goods are destroyed or damaged, then the cost of repair or replacement shall be borne by the Client.
- 8.7 The Supplier shall not be liable for any defect, deterioration and/or damage to the Goods:
- (a) if the Client does not follow the Supplier's recommendations;
 - (b) where the Goods are stored for extended periods of time as a result of any action/inaction by the Client; and
 - (c) resulting from incorrect use and/or installation of the Goods by the Client or any other third party.
- 8.8 The Client acknowledges and accepts that:
- (a) on the Client's supplied items to be powder coated, that any seams that are not fully sealed or enclosed in the item will not be guaranteed as moisture may seep into the gaps and thereby be prone to rust;
 - (b) stainless steel is a textured material and can be of a porous nature. The Client accepts that products made from this material can rust and mark easily. The Client accepts that care should be taken to maintain the finish of and longevity of stainless steel products;
 - (c) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not have deemed to be a defect in the Goods;
 - (d) where hot dip galvanising surfaces have been selected it will be undertaken according to Standards New Zealand; AS-NZS2312.2 which clarifies the requirements for proper specification and design of hot dip galvanised articles in the atmosphere and AS-NZS4680 which specifies the requirements and tests for hot dip zinc coatings on fabrications, assembled steel products, tubular fabrications, fabricated wire work, steel forgings, steel stampings, ferrous castings, nails and small components. Any maintenance by the Client or any other third party must be managed according to the aforementioned standards;
 - (e) routine cleaning will prolong the original appearance of the mild/stainless steel and provides maximum corrosion resistance when it is cleaned regularly. The Client further agrees that crevice corrosion (tea staining) may occur if dirt, grime, and surface stains containing corrosive substances are left on the stainless-steel surface. The frequency of cleaning required will depend on aesthetic requirements, severity of the environment, suitability of the stainless-steel grade and surface finish for that particular environment, the presence or lack of heavy rains to clean the surface, and the design of the mild/stainless steel; and
 - (f) Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
- 8.9 The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 9. Accuracy of Client's Plans and Measurements**
- 9.1 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 Where the Client is to supply the Supplier with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate information. The Supplier shall be entitled to rely on the accuracy of such information, and it shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate information being provided by the Client.
- 9.3 In the event the Client gives information relating to measurements and quantities of the materials required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities before the Client or the Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 9.4 Where the Client has provided instructions or specifications for the Supplier to complete the Services (including, but not limited to, any requested variation to the original design), then the Supplier shall accept no liability whatsoever for the finished Services or Goods being deemed as unsatisfactory to the Client.
- 10. Compliance with Laws**
- 10.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 11. Title**
- 11.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Supplier all amounts owing to the Supplier; and

- (b) the Client has met all of its other obligations to the Supplier.
- 11.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (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 Supplier and must pay or deliver the proceeds to the Supplier 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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
 - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
 - (f) the Supplier 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 Supplier; and
 - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 12.1 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 that have previously been supplied and that will be supplied in the future by the Supplier to the Client, and the proceeds from such Goods as listed by the Supplier to the Client in invoices rendered from time to time.
- 12.2 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 the Supplier 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 Supplier 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 or the proceeds of such Goods in favour of a third party without the prior written consent of the Supplier; and
 - (d) immediately advise the Supplier 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.
- 12.3 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.4 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 12.1 to 12.3.
- 12.5 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of the Supplier 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, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 13.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 13.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects

- 14.1 The Client shall inspect the Goods on Delivery and shall within fourteen (14) days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above, and provided that:
- (a) the Supplier has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within twenty-eight (28) days of the Delivery date; and
 - (c) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) 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.

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- 14.3 If the Supplier accepts that the Client is entitled to reject the Goods following their return pursuant to clause 14.2(b) the Supplier will reimburse the Client's actual and reasonable costs of return Delivery.
- 14.4 Subject to clause 14.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 15. Warranty**
- 15.1 Subject to the conditions of warranty set out in clause 15.2 the Supplier warrants that if any defect in any workmanship provided by the Supplier becomes apparent and is reported to the Supplier within six (6) months of the date of Delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the defect.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods or serviced item; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
 - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods or serviced item 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 Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without the Supplier's consent.
 - (c) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Client's claim.
- 15.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 16. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 16.1 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 Supplier to the Client.
- 16.2 The Supplier agrees to abide by the provisions of the Fair Trading Act ("FTA").
- 17. Intellectual Property**
- 17.1 Where the Supplier 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 Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 17.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 17.3 The Client shall indemnify the Supplier against any claims by third parties for and content or information supplied including, but not limited to, patent, trademark, design or copyright infringement, directly or indirectly arising out of the brief, Client's instructions, design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Client provides copies or information to the Supplier, the Client warrants that:
- (a) the Client has ownership or absolute rights to use any intellectual property and/or proprietary interest in such materials; and
 - (b) such copies does not breach any patent, trademark, design or copyright, and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier.
- 17.4 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.
- 18. Default and Consequences of Default**
- 18.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 18 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.
- 18.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Supplier;
 - (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.

19. Cancellation

- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 19.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Goods to the Client, the Supplier 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 Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.
- 19.4 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.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by the Supplier is "**Personal Information**" as defined and referred to in clause 20.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client authorises the Supplier or the Supplier'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 Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 20.5 The Client shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 20.6 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.7 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

21. Service of Notices

- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 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.

22. Trusts

- 22.1 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 or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;

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- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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, the trustees and 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 during the term of the Contract without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (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 fund or trust property.

23. General

- 23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 23.2 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.
- 23.3 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 courts of Napier, New Zealand.
- 23.4 Subject to the CGA, the liability of the Supplier and the Client under this Contract shall be limited to the Price.
- 23.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 23.6 The Client cannot licence or assign without the written approval of the Supplier.
- 23.7 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 23.8 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client.
- 23.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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. This clause does not apply to a failure by the Client to make any payment due to the Supplier, following cessation of a Force Majeure.
- 23.10 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.