

Terms & Conditions of Trade | Allegion (New Zealand) Limited

1. Definitions

- 1.1 **"Agreement"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement. If there are any inconsistencies between the incorporated documentation (including, but not limited to, any special terms or conditions), then any conflicting term or condition contained in any quotation, order, invoice or other document, or amendments expressed to be supplemental to this Agreement, shall prevail.
- 1.2 **"Business Day"** means a day on which the major trading banks are open for normal business to be conducted, excluding a Saturday, Sunday, or public holiday.
- 1.3 **"Buyer"** means the person/s, entities or any person acting on behalf of and with the authority of the Buyer 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 Buyer, is a reference to each Buyer jointly and severally; and
 - (b) if the Buyer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Buyer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Buyer's executors, administrators, successors and permitted assigns.
- 1.4 **"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 Buyer does not wish to allow Cookies to operate in the background when using the Seller's website, then the Buyer 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.
- 1.5 **"Goods"** means all Goods or Services (including, but not limited to, any parts or consumables used during the course of the Services) supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 **"GST"** means Goods and Services Tax as defined within the "Goods and Services Tax Act 1985".
- 1.7 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Seller and the Buyer in accordance with clause 6 below and shall be in New Zealand Dollars (\$NZ), unless otherwise specified.
- 1.8 **"Seller"** means Allegion (New Zealand) Limited, its successors and assigns.

2. Interpretation

- 2.1 In this Agreement, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$), is a reference to New Zealand currency; and
 - (e) this Agreement is not to be interpreted against the Seller merely because they prepared this Agreement; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity, or discrepancy in this Agreement:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules.
 - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement, or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Agreement; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.
- 3.2 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Seller's website. In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.
- 3.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3.5 The Buyer acknowledges and accepts that:

- (a) 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 Buyer 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 Agreement, unless expressly stated as such in writing by the Seller; while the Seller may have provided information or figures to the Buyer regarding the performance of the Goods, the Buyer acknowledges that the Seller has given these in good faith, and are estimates based on the prescribed standards;
 - (c) the Buyer shall be responsible for ensuring that the Goods ordered are suitable for their intended use;
 - (d) the supply of Goods on credit shall not take effect until the Buyer has completed a credit application with the Seller and it has been approved with a credit limit established for the account;
 - (e) in the event that the supply of Goods request exceeds the Buyer's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery and/or request an alternative payment method;
 - (f) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 6.2, subject to prior confirmation and agreement of both parties. The Seller also reserves the right to halt all Services until such time as the Seller and the Buyer agree to such changes. The Seller shall not be liable to the Buyer for any loss or damage the Buyer suffers due to the Seller exercising its rights under this clause; and
 - (g) changes in regulations or decisions made by local authorities may alter necessary specifications and therefore costs that are unforeseen in order to satisfy such changes in regulations or decisions and this will be invoiced as a variation.
- 3.6 The commencement date shall be the date of the first delivery of the Services, or from the date of signing, whichever, is the earlier.
- 3.7 In the event that the Goods and/or Services provided by the Seller are the subject of an insurance claim that the Buyer has made, then the Buyer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by the Seller and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful, except where such claim was for missing delivery by the Seller.
- 3.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Agreement 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 Buyer 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 Agreement; 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 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 Seller; the Buyer:
- (a) shall not be entitled to treat this Agreement as repudiated nor render it invalid; but
 - (b) shall not be responsible for any additional costs incurred by the Seller arising from the error or omission.

5. Change in Control

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

6. Price and Payment

- 6.1 At the Seller's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Buyer; or
 - (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or
 - (c) the Seller'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 Seller reserves the right to change the Price:
- (a) by giving thirty (30) days' notice in writing to the Buyer; or
 - (b) if a variation to the Goods which are to be supplied is requested; or
 - (c) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (d) if during the course of the Services, the Goods are delayed from third party suppliers, cease or are not to be available from the Seller's third party suppliers, then the Seller reserves the right to provide alternative Goods; or
 - (e) in the event of increases to the Seller in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates and/or international freight, shipping and

- insurance charges, of stock or increases to the Seller in the cost of taxes, duties and levies, etc.) which are beyond the Seller's control.
- 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 Buyer 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 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:
- on or before delivery of the Goods;
 - for certain approved Buyers, due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;
 - the date specified on any invoice or other form as being the date for payment; or
 - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.
- 6.5 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Buyer and the Seller.
- 6.7 The Seller may in its discretion allocate any payment received from the Buyer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Buyer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller 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 Buyer 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 Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer 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:
- the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or
 - the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the 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, subject to:
- orders to the value of \$250.00 net Price and over will have freight prepaid to the Buyer's nominated address in New Zealand for orders accepted by the Seller;
 - orders to the value of less than \$250.00 net Price, or where overnight, weekend, or special Delivery is requested, will have freight charged to the Buyer;
 - the Buyer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Buyer is unable to take Delivery of the Goods as arranged, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.3 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.
- 7.4 Any time specified by the Seller for Delivery of the Goods is an estimate only. The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Seller will not be liable for any loss or damage incurred by the Buyer as a result of delivery being late.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer 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 Buyer, 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.
- 8.3 If the Buyer 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 Buyer's sole risk.
- 8.4 The Buyer acknowledges and accepts that Goods supplied in unlacquered finishes (including but not limited to, oil rubbed bronze, antique bronze, etc) are designed to change in appearance over time, creating a living finish through daily use and as thus shall not be deemed to be a defective product and shall be void of any warranty expressed or implied.
- 8.5 It shall be the Buyers responsibility to ensure that the Goods are cleaned regularly in accordance with any cleaning instructions provided with the Goods, or referenced on packaging to the Seller's website, to maintain the validity of the warranty offered by the Seller.
- 8.6 It is the Buyer's responsibility to ensure that the Buyer's products are insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) while stored at the Seller's premises. The Buyer's products are at all times stored at the Buyer's sole risk.
- 9. Title**
- 9.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:
- the Buyer has paid the Seller all amounts owing to the Seller; and
 - the Buyer has met all of its other obligations to the Seller.
- 9.2 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.
- 9.3 It is further agreed that until ownership of the Goods passes to the Buyer in accordance with clause 9.1:
- the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request;
 - the Buyer holds the benefit of the Buyer'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;
 - the Buyer 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 Buyer sells, disposes or parts with possession of the Goods then the Buyer 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;
 - the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer 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;
 - the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods, subject to prior notice;
 - the Seller may recover possession of any Goods in transit whether or not delivery has occurred;
 - the Buyer 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;
 - the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.
- 10. Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Buyer, and the proceeds from such Goods as listed by the Seller to the Buyer in invoices rendered from time to time.
- 10.2 The Buyer undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - 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 Seller; and
 - 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.
- 10.3 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.4 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 10.1 to 10.3.
- 10.5 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of the Seller agreeing to supply the Goods, the Buyer 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 Buyer either now or in the future, and the Buyer grants a security interest in all of its present and after-acquired property, to secure the performance by the Buyer 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.
- 11.2 The Buyer 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.
- 11.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Buyer's behalf.
- 12. Defects and Returns**
- 12.1 The Buyer shall inspect the Goods on delivery and shall within fourteen (14) 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 Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer 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 Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods, to a quality as new, which would enable the Buyer to sell to its customers as new and not as "second-hand".

- 12.2 Goods will not be accepted for return other than in accordance with 12.1 above, and provided that:
- the Seller has agreed in writing to accept the return of the Goods; and
 - the Goods are returned within fourteen (14) days of the delivery date; and
 - the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances; and
 - Goods are returned with the original packing slip or invoice number; and
 - returned Goods are clearly identified with the Buyers' name.
- 12.3 If the Seller accepts that the Buyer is entitled to reject the Goods following their return pursuant to clause 12.2(b) the Seller will reimburse the Buyer's actual and reasonable costs of return Delivery.
- 12.4 The Seller may (in its discretion) accept the return of non-defective Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight, (only if the Buyer is at fault in ordering them).
- 12.5 Subject to clause 12.1, non-stocklist items or Goods made to the Buyer's specifications are not acceptable for credit or return.
- 13. Warranty**
- 13.1 The Seller's standard limited warranty(ies) related to the Goods or Services are applicable to this Agreement. The limited warranty(ies) will be separately furnished by Seller to Buyer at the time of Delivery.
- 13.2 In the event that certain product warranties are not separately furnished, then the Seller warrants only to the Buyer that the Goods will be free from defects in material and workmanship for a period of one (1) year from the date of shipment of the Goods. The Seller's sole obligation under this warranty is limited to repairing or replacing, at its option, the defective products, as new to help the Buyer to meet its obligations to its customers.
- 13.3 The conditions applicable to the warranty given by clause 13.1 are:
- the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - failure on the part of the Buyer to properly maintain any Goods; or
 - failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - any use of any Goods otherwise than for any application specified on a quote or order form; or
 - the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - fair wear and tear, any accident or act of God.
 - the warranty shall cease and the 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.
 - in respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim, but Seller will ensure action/response on a "reasonable" basis.
- 13.4 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.
- 13.5 The conditions applicable to the warranty given on Goods supplied by the Seller are contained on the "Warranty Documentation" that will be supplied with the Goods.
- 13.6 NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE GOODS OR SERVICES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 14. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 14.1 If the Buyer is acquiring Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Seller to the Buyer.
- 14.2 The Seller agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").
- 15. Intellectual Property**
- 15.1 Where the Seller has designed, drawn or developed Goods for the Buyer, 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.
- 15.2 The Buyer 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 Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement, if the Buyer is at fault.
- 15.3 The Buyer 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 Buyer.
- 16. Default and Consequences of Default**
- 16.1 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.
- 16.2 If the Buyer owes the Seller any money the Buyer 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).
- 16.3 Further to any other rights or remedies the Seller may have under this Agreement, if a Buyer has made payment to the Seller, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this Agreement.
- 16.4 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 Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;
 - the Buyer has exceeded any applicable credit limit provided by the Seller;
 - the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 17. Cancellation**
- 17.1 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.
- 17.2 Either party may terminate this Agreement by providing the other party with a minimum of thirty (30) days' notice in writing, subject to:
- if the Seller, due to reasons beyond the Seller's reasonable control, is unable to deliver any Goods to the Buyer, 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 Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation; and
 - the Buyer 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 Buyer to otherwise accept Delivery of the Goods and/or Services shall place the Buyer in breach of this Agreement.
- 17.3 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 18. Compliance with Laws**
- 18.1 Both the Buyer and the Seller agree that they will at all times ensure that they 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 occupational health and safety laws, and any other relevant safety standards or legislation.
- 18.2 In advertising, marketing, promoting, sales, and installation of the Goods and in carrying on the Buyer's business, each Buyer, its owners, officers, directors, employees or agents (collectively and individually in this clause "Buyer") must comply with its, his or her obligations under the law including without limitation, the Buyer must not:
- make any untrue or misleading statement relating to the Seller, its goods and services including the Goods, its business or its practices;
 - pay, offer or promise to pay, or authorise the payment of, any monies or anything of value, directly or indirectly, to any government official or employee, any official or employee of a state-run or state-owned or controlled enterprise or entity, any official or employee of a public international organisation, any candidate for political or public office, any official or employee of any political party, or any family member or relative of such persons or any political party for the purpose of influencing any act or decision of any such official, employee, candidate, political party, enterprise or entity, public organisation, or government to obtain or retain business, or direct business to any person or entity, or for any other improper advantage or purpose, and in the event the Buyer breaches its, his or her obligations under this clause, the Seller may immediately terminate this Agreement and the Buyer shall indemnify and hold harmless the Seller against any and all claims, losses, damages, penalties or fines related to such breach of the Agreement.
- 19. Confidentiality**
- 19.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent, other than:
- as required by law (in which case it must simultaneously be advised to the other respective contracted party of such disclosure); or
 - to the extent necessary to perform its obligations under this Agreement.
- 19.2 The quotation and the information contained in the quotation provided by the Seller to the Buyer is done so on a "commercial in confidence" basis thereby, the Buyer agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of the Seller.
- 20. Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by the Seller is "Personal Information" as defined and referred to in clause 20.3 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 as set out in the Act. The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Buyer's Personal Information, held by the Seller that may result in serious harm to the Buyer, the Seller will notify the Buyer in accordance with the Act.

- Any release of such Personal Information must be in accordance with the Act and must be approved by the Buyer by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Seller in respect of Cookies where the Buyer 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 Buyer's:
- IP address, browser, email client type and other similar details;
 - tracking website usage and traffic; and
 - reports are available to the Seller when the Seller sends an email to the Buyer, so the Seller may collect and review that information ("collectively Personal Information")
- If the Buyer consents to the Seller's use of Cookies on the Seller's website and later wishes to withdraw that consent, the Buyer may manage and control the Seller's privacy controls via the Buyer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Buyer authorises the Seller or the Seller's agent to:
- access, collect, retain and use any information about the Buyer;
 - 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 Buyer's creditworthiness; or
 - for the purpose of marketing products and services to the Buyer.
 - disclose information about the Buyer, whether collected by the Seller from the Buyer 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 Buyer.
- 20.4 Where the Buyer is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 20.5 The Buyer shall have the right to request (by email) from the Seller, a copy of the Personal Information about the Buyer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information.
- 20.6 The Seller will destroy Personal Information upon the Buyer's request (by email) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 20.7 The Buyer can make a privacy complaint by contacting the Seller via email. 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 Buyer is not satisfied with the resolution provided, the Buyer 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 Agreement shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this Agreement;
 - by sending it by registered post to the address of the other party as stated in this Agreement;
 - if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (if any), on receipt of confirmation of the transmission;
 - 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 Buyer at any time upon or subsequent to entering into the Agreement is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Seller may have notice of the Trust, the Buyer covenants with the Seller as follows:
- the Agreement extends to all rights of indemnity which the Buyer now or subsequently may have against the Trust, the trustees and the trust fund;
 - the Buyer 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 Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Buyer against the Trust, the trustees and the trust fund. The Buyer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - the Buyer will not during the term of the Agreement without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - the removal, replacement or retirement of the Buyer as trustee of the Trust;
 - any alteration to or variation of the terms of the Trust;
 - any advancement or distribution of capital of the Trust; or
 - any resettlement of the trust fund or trust property.
- 23. Construction Contracts Act 2002**
- 23.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where the Seller is a commercial provider this Agreement is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this Agreement shall be in no way limited by any contract that the Buyer may have entered into with a third party in relation to the supply of Goods and/or Services to that third party or the payment by the third party to the Buyer of any monies whether by progress payments or otherwise.
- 24. Dispute Resolution**
- 24.1 Where a dispute arises between the parties, it will be referred to the Seller and the Buyer's directors for resolution. The Seller and the Buyer agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 24.2 The dispute resolution process will be as follows:
- A party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the parties fail to determine the dispute within the Negotiation Period, the parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the parties) to reach Agreement on:
 - a mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);
 - the steps to be taken by each party and the timing of those steps;
 - who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses.
 - If the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either the Seller or the Buyer may commence court proceedings or arbitration proceedings to resolve the dispute.
- 25. General**
- 25.1 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.
- 25.2 These terms and conditions and any Agreement 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.
- 25.3 Subject to the CGA, the liability of the Seller and the Buyer under this Agreement shall be limited to the Price.
- 25.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Buyer's consent provided the assignment does not cause detriment to the Buyer.
- 25.5 The Buyer cannot licence or assign without the written approval of the Seller.
- 25.6 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Buyer 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.
- 25.7 The Buyer agrees that the Seller may amend their general terms and conditions for subsequent future Agreements with the Buyer by disclosing such to the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Seller to provide Goods to the Buyer.
- 25.8 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, and the Seller:
- shall not be liable for any claims for non-fulfilment or late Delivery should actual Delivery (or any parts) be delayed in consequence of unforeseen events under this clause 25.8 and unforeseen breakdown of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply adverse non-foreseeable weather conditions, action of government or port authority, delay of vessel, railroad embargoes, in ability to obtain transportation facilities or due to failure of an original equipment manufacturer to supply components by the due date; and
 - shall be entitled (at its option) to terminate this Agreement or extend the time for performance.
- 25.9 Furthermore, clause 25.8 does not apply to a failure by the Buyer to make a payment to the Seller, following cessation of a Force Majeure.
- 25.10 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.
- 25.11 Clauses 17, 19, 21, 24, and 25.3 survive the end of this Agreement, and any other terms and conditions which by their nature are intended to survive.