

Contemporano Limited – Terms & Conditions of Trade

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 Manufacturer to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:	(a) resulting from an inadvertent mistake made by the Manufacturer in the formation and/or administration of this Contract; and/or	8.11 In the event that the Client’s property experiences any movement which in turns causes cracks to the Materials supplied, the Client accepts and acknowledges that if the Client requests the Manufacturer to rectify such damage that the Manufacturer reserves the right shall charge the Client for additional Works in accordance with clause 6.2.
(a)	if there is more than one Client, is a reference to each Client jointly and severally; and	(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Manufacturer in respect of the Works.	8.12 The Manufacturer shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against the Manufacturer’s recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to the Manufacturer. Accordingly, the Manufacturer offers no warranty regarding the aforementioned.
(b)	if the Client is a partnership, it shall bind each partner jointly and severally; and	In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Manufacturer; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.	8.13 The Manufacturer:
(c)	if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and	Change in Control	(a) shall not be liable for any existing defects revealed by the Manufacturer during the provision of the Works. Any existing defects revealed shall be reported to the Client by the Manufacturer on completion of the Works; and
(d)	includes the Client’s executors, administrators, successors and permitted assigns.	The Client shall give the Manufacturer not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax numbers, change of trustees, or business practices). The Client shall be liable for any loss incurred by the Manufacturer as a result of the Client’s failure to comply with this clause.	(b) shall not be liable responsible for any damage to the Works or Materials caused by any third party (including, but not limited to, bench top contractors or other trades).
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.	Price and Payment	The Manufacturer 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.
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 Manufacturer’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.	At the Manufacturer’s sole discretion, the Price shall be either: (a) as indicated on invoices provided by the Manufacturer to the Client in respect of Works performed or Materials supplied; or	8.14 The Manufacturer will deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
1.4	“Intended Use” means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.	(b) the Manufacturer’s quoted Price (subject to clause 6.2) which shall be binding upon the Manufacturer provided that the Client shall accept the Manufacturer’s quotation in writing within thirty (30) days.	8.15 Any time specified by the Manufacturer for delivery of the Works is an estimate only and the Manufacturer will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Manufacturer is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Manufacturer shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
1.5	“Manufacturer” means Contemporano Limited, its successors and assigns.	(c) if a variation to the Materials which are to be supplied is requested; or	8.16 Where the Manufacturer is requested to store the Client’s product, or where the product is not collected within twenty-four (24) hours of advice to the Client that it is ready for collection, then the Manufacturer (at its sole discretion) may charge a fee for storage.
1.6	“Non-Conforming Building Product” means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building: (a) the product is not, or will not be, safe; or (b) does not, or will not, comply with the relevant regulatory provisions; or (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.	(d) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, the Client’s decision on colour choice, change of design, detection of moisture, removal of cabinets, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or	8.17 If the Manufacturer retains ownership of the Materials under clause 12 then: (a) unless otherwise agreed where the Manufacturer is to both supply and install Materials then the Manufacturer shall maintain a Contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client. Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Manufacturer to leave Materials outside the Manufacturer’s premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Client and it shall be the Client’s responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then the replacement of the Materials shall be at the Client’s expense. Where the Client requests the re-use of existing materials or the supply of third-party materials (including, but not limited to, granite or stainless-steel bench tops, appliances), no responsibility shall be taken by the Manufacturer for the appearance, service, or performance of the materials. Where the Contract does not include installation of the Materials by the Manufacturer, the Manufacturer shall not be liable for any defect or damage resulting from incorrect or faulty installation. The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that the Manufacturer reasonably form the opinion that the Client’s premises is not safe for the Works to proceed then the Manufacturer shall be entitled to delay the provision of the Works (in accordance with clause 7.2) until the Manufacturer is satisfied that it is safe for the installation. In the event asbestos or any other toxic substances are discovered at the Worksite, that it is the Client’s responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Manufacturer against any costs incurred by the Manufacturer as a consequence of such discovery. Under no circumstances will the Manufacturer handle removal of asbestos product. Granite and marble/cast stone, being stone products that have natural colour and shade tones, markings, and veining may vary from colour samples provided. The Manufacturer gives no guarantee (expressed or implied) that colour samples will match the Materials supplied. The Manufacturer will make every effort to match colour samples to the Materials supplied but will not be liable in any way whatsoever for colour samples differing from the Materials supplied.
1.7	“Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between the Manufacturer and the Client in accordance with clause 6 below.	(e) in the event of increases to the Manufacturer in the cost of labour or Materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange, increases to the Manufacturer in the cost of taxes, levies, freight and insurance charges or delays in shipment etc.) which are beyond the Manufacturer’s control.	8.18 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
1.8	“Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Manufacturer to the Client at the Client’s request from time to time (where the context so permits the terms “Works” or “Materials” shall be interchangeable for the other).	Variations will be charged for on the basis of the Manufacturer’s quotation, and will be detailed in writing, and shown as variations on the Manufacturer’s invoice. The Client shall be required to respond to any variation submitted by the Manufacturer within ten (10) working days. Failure to do so will entitle the Manufacturer 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. The cost of installation is included in the original quotation based on the Materials supplied and installed at one time, in the event that the installation is staggered due to delay of Materials, or the Client changes the installation time, the Manufacturer shall reserve the right to charge for any extra associated costs incurred.	8.19 Whilst the Manufacturer will take all care to avoid damage to any underground services the Client agrees to indemnify the Manufacturer 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 10.1. It is the intention of the Manufacturer and agreed by the Client that it is the Client’s responsibility to: (a) ensure that the Manufacturer has clear and free access to the Worksite at the agreed date/s and time/s to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Manufacturer shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways, concrete, paved or grassed areas and gardens and landscaping) unless due to the negligence of the Manufacturer; (b) remove any furniture or personal items from the vicinity of the Works, and agrees that the Manufacturer shall not be liable for any damage caused to those items through the Client’s failure to comply with this clause; (c) provide adequate dust sheets to protect the Client’s furniture and décor. The Manufacturer will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process; (d) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc; and (e) provide the Manufacturer with facilities, as specified by the Manufacturer, (including, but not limited to, a suitable free power source) for the duration of the Works.
1.9	“Worksite” means the address nominated by the Client to which the Materials are to be supplied by the Manufacturer.	At the Manufacturer’s sole discretion, a non-refundable deposit may be required. Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Manufacturer, which may be: (a) completion of the Works; or (b) by way of progress payments in accordance with the Manufacturer’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 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 of 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 Manufacturer.	8.20 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.	Acceptance	At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the “Retention Money”), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 19(i) of the Construction Contracts Act 2015 and as such no Retention Money shall be used other than to remedy defects in the performance of the Manufacturer’s obligations under the Contract. Payment may be made by electronic-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Manufacturer.	8.21 In the event that the Client requires an employee or subcontractor of the Manufacturer to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Manufacturer’s standard (and/or overtime, if applicable) hourly labour rate; or (b) where the Manufacturer is in control of the Worksite, the Client and/or the Client’s third-party contractors must initially carry out the Manufacturer’s Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Manufacturer.
2.1	The Client acknowledges and agrees that:	The Manufacturer may in its discretion allocate any payment received from the Client towards any invoice that the Manufacturer determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Manufacturer may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Manufacturer, payment will be deemed to be allocated in such manner as preserves the maximum value of the Manufacturer’s Purchase Money Security Interest (as defined in the PPSA) in the Materials.	8.22 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.	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 Manufacturer nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Manufacturer is a claim made under the Construction Contracts Act 2015. Nothing in this clause 6.10 prevents the Client from the ability to dispute any invoice. Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Manufacturer an amount equal to any GST the Manufacturer must pay for any supply by the Manufacturer under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	8.23 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.3	Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.	The Client shall not be liable to the Client for any loss or damage the Client suffers due to the Manufacturer exercising its rights under this clause.	8.24 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.4	The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with the Manufacturer and it has been approved with a credit limit established for the account.	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.25 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.5	In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Manufacturer reserves the right to refuse delivery.	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.26 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.6	Any advice, recommendation, information, assistance, or service provided by the Manufacturer in relation to Materials or Works supplied is given in good faith to the Client, or the Client’s agent and is based on the Manufacturer’s own knowledge and experience and shall be accepted without liability on the part of the Manufacturer. Where such advice or recommendations are not acted upon then the Manufacturer shall require the Client or their agent to authorise commencement of the Works in writing. The Manufacturer shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.27 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.7	The Client 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 Manufacturer reserves the right to vary the Price with alternative Materials as per clause 6.2, subject to prior confirmation and agreement of both parties. The Manufacturer also reserves the right to halt all Works until such time as the Manufacturer and the Client agree to such changes. The Manufacturer shall not be liable to the Client for any loss or damage the Client suffers due to the Manufacturer exercising its rights under this clause.	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.28 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
2.8	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.	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.29 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
3.	Authorised Representatives	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.30 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
3.1	Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Manufacturer as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the Works on the Client’s behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Manufacturer in writing that said person is no longer the Client’s duly authorised representative).	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.31 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
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 Manufacturer in writing of the parameters of the limited authority granted to their representative.	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.32 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
3.3	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.33 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
4.	Errors and Omissions	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.34 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
4.1	The Client acknowledges and accepts that the Manufacturer shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s).	The Client specifically acknowledges and accepts that they will be solely liable to the Manufacturer for all additional costs incurred by the Manufacturer (including the Manufacturer’s profit margin) in providing any Works, Materials or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.35 The Client acknowledges and agrees that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.

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12. **Title**
- 12.1 The Manufacturer and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid the Manufacturer all amounts owing to the Manufacturer; and
 - (b) the Client has met all of its other obligations to the Manufacturer.
- 12.2 Receipt by the Manufacturer 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Manufacturer on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Manufacturer and must pay to the Manufacturer 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 Manufacturer shall be sufficient evidence of the Manufacturer's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Manufacturer to make further enquiries; the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Manufacturer and must pay or deliver the proceeds to the Manufacturer on demand;
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Manufacturer and must sell, dispose of or return the resulting product to the Manufacturer as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises the Manufacturer to enter any premises where the Manufacturer believes the Materials are kept and recover possession of the Materials;
 - (g) the Manufacturer may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Manufacturer; and
 - (i) the Manufacturer may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
13. **Personal Property Securities Act 1999 ("PPSA")**
- 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by the Manufacturer to the Client and the proceeds from such Materials as listed by the Manufacturer to the Client in invoices rendered from time to time.
- 13.2 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 Manufacturer 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 Manufacturer 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 or the proceeds of such Materials in favour of a third party without the prior written consent of the Manufacturer; and
 - (d) immediately advise the Manufacturer 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.
- 13.3 The Manufacturer and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Manufacturer, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by the Manufacturer under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
14. **Security and Charge**
- 14.1 In consideration of the Manufacturer agreeing to supply the Works, the Client charges 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.
- 14.2 The Client indemnifies the Manufacturer from and against all the Manufacturer's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Manufacturer's rights under this clause.
- 14.3 The Client irrevocably appoints the Manufacturer and each director of the Manufacturer as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
15. **Defects and Returns**
- 15.1 The Client shall inspect the Materials on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify the Manufacturer of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Manufacturer an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Manufacturer has agreed in writing that the Client is entitled to reject, the Manufacturer's liability is limited to either (at the Manufacturer's discretion) replacing the Materials or repairing the Materials.
- 15.2 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) the Manufacturer has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) the Manufacturer will not be liable for Materials which have not been stored or used in a proper manner; and
 - (e) 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.
- 15.3 Returned Materials may (at the Manufacturer's sole discretion), incur restocking and handling fees.
- 15.4 Subject to clause 15.1, non-stockist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.
16. **Warranties**
- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Manufacturer warrants that if any defect in any workmanship provided by the Manufacturer becomes apparent and is reported to the Manufacturer within twelve (12) months of the date of delivery (time being of the essence) then the Manufacturer will either (at the Manufacturer's sole discretion) replace or remedy the defect.
- 16.2 The conditions applicable to the warranty given by clause 16.1 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 Materials or serviced item; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Manufacturer; or
 - (iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials 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 Manufacturer shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Manufacturer's consent.
 - (c) in respect of all claims the Manufacturer shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 16.3 For Materials not manufactured by the Manufacturer, the warranty shall be the current warranty provided by the manufacturer of the Materials and the Client shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
17. **Consumer Guarantees Act 1993 and the Fair Trading Act**
- 17.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Materials by the Manufacturer to the Client.
- 17.2 The Manufacturer agrees to abide by the provisions of the Fair Trading Act ("FTA") where applicable.
18. **Intellectual Property**
- 18.1 Where the Manufacturer has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Manufacturer, and shall only be used by the Client at the Manufacturer's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Manufacturer.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Manufacturer will not cause the Manufacturer to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Manufacturer against any action taken by a third party against the Manufacturer in respect of any such infringement.
- 18.3 The Client agrees that the Manufacturer may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Manufacturer has created for the Client.
19. **Default and Consequences of Default**
- 19.1 Interest on overdue payments 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 Manufacturer's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Manufacturer any money the Client shall indemnify the Manufacturer from and against all costs and disbursements incurred by the Manufacturer in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Manufacturer's collection agency costs, and bank disbursement fees).
- 19.3 Further to any other rights or remedies the Manufacturer may have under this Contract, if a Client has made payment to the Manufacturer, 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 Manufacturer under this clause 19, 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.
- 19.4 Without prejudice to the Manufacturer's other remedies at law the Manufacturer shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Manufacturer shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Manufacturer becomes overdue, or in the Manufacturer'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 Manufacturer;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
 - (d) a receiver or liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
20. **Cancellation**
- 20.1 Without prejudice to any other rights or remedies the Manufacturer may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then the Manufacturer may suspend or terminate the supply of the Works. The Manufacturer will not be liable to the Client for any loss or damage the Client suffers because the Manufacturer has exercised its rights under this clause.
- The Manufacturer may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Manufacturer shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Manufacturer for Works already performed. The Manufacturer shall not be liable for any loss or damage whatsoever arising from such cancellation.
- Where the Client wishes to cancel delivery of the Works, it shall be the Client's responsibility to provide the Manufacturer with at least twenty-four (24) hours written notice from the day of the placement of the order. In the event that notice is received outside of the prescribed timeframe the Client acknowledges and agrees that they shall be liable for all losses incurred (whether direct or indirect) by the Manufacturer as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
21. **Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by the Manufacturer is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. The Manufacturer acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. The Manufacturer acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Manufacturer that may result in serious harm to the Client, the Manufacturer 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Manufacturer in respect of Cookies where the Client utilises the Manufacturer's website to make enquiries. The Manufacturer 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 Manufacturer when the Manufacturer sends an email to the Client, so the Manufacturer may collect and review that information ("Collectively Personal Information").
- If the Client consents to the Manufacturer's use of Cookies on the Manufacturer's website and later wishes to withdraw that consent, the Client may manage and control the Manufacturer's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Client authorises the Manufacturer or the Manufacturer'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 Manufacturer from the Client directly or obtained by the Manufacturer 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.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from the Manufacturer, a copy of the Personal Information about the Client retained by the Manufacturer and the right to request that the Manufacturer correct any incorrect Personal Information.
- 21.6 The Manufacturer will destroy Personal Information upon the Client's request (by e-mail) 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.
- 21.7 The Client can make a privacy complaint by contacting the Manufacturer via e-mail. The Manufacturer 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>.
22. **Suspension of Works**
- 22.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) the Manufacturer has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a schedule amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Manufacturer by a particular date; and
 - (iv) the Manufacturer has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if the Manufacturer suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been completed with.
 - (c) if the Manufacturer 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 Manufacturer under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Manufacturer suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes the Manufacturer from continuing the Works or performing or complying with the Manufacturer's obligations under this Contract, then without prejudice to the Manufacturer's other rights and remedies, the Manufacturer may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by the Manufacturer as a result of such suspension and commencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, the Manufacturer suspends the Works and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, the Manufacturer shall be entitled to terminate the Contract, in accordance with clause 20.
23. **Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by leaving 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.
- 23.2 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.
24. **Trusts**
- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Manufacturer may have notice of the Trust, the Client covenants with the Manufacturer as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Manufacturer (the Manufacturer will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
25. **General**
- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacements.
- 25.2 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.
- 25.3 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 North Shore, Auckland, New Zealand.
- 25.4 Subject to the CGA the Manufacturer shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Manufacturer of these terms and conditions (alternatively the Manufacturer's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.5 The Manufacturer may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of the Manufacturer.
- 25.7 The Manufacturer may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Manufacturer's sub-contractors without the authority of the Manufacturer.
- 25.8 The Client agrees that the Manufacturer 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 Manufacturer to provide Works to the Client.
- 25.9 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 a payment to the Manufacturer.
- 25.10 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.