

1. Definitions

- 1.1 “Contractor” means L A Hughes Plumbing & Gas Limited, its successors and assigns or any person acting on behalf of and with the authority of L A Hughes Plumbing & Gas Limited.
- 1.2 “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by the Contractor to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between the Contractor and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Contractor.
- 2.3 In the event that the Materials and/or Works provided by the Contractor are the subject of an insurance claim that the Customer has made, then the Customer 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 Contractor and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.4 Where the Contractor gives advice, recommendations, information, assistance or service to the Customer or the Customer’s agent, regarding the Materials or Works then it is given in good faith and the Contractor shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same. In addition, none of the Contractor’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Contractor in writing nor is the Contractor bound by any such unauthorised statements.
- 2.5 In the event that the Contractor is required to provide the Works urgently, that may require the Contractor’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Customer additional a minimum of two (2) hours’ labour costs (penalty rates will apply), unless otherwise agreed between the Contractor and the Customer.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

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

4. Price and Payment

- 4.1 At the Contractor’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Contractor to the Customer in respect of Works performed or Materials supplied; or
 - (b) the Contractor’s Price at the date of delivery of the Works according to the Contractor’s current pricelist; or
 - (c) the Contractor’s quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor’s quotation in writing within thirty (30) days.
- 4.2 The Contractor reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site or crawl spaces, availability of machinery, safety conditions including the discovery of asbestos, prerequisite work by any third party not being completed, change of design, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor’s control.
- 4.3 At the Contractor’s sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
 - (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with the Contractor’s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (c) for certain approved Customer’s, due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.
- 4.5 Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Contractor.
- 4.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

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- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5. Provision of the Works**
- 5.1 Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify the Contractor that the site is ready.
- 5.3 At the Contractor's sole discretion, the cost of delivery is included in the Price.
- 5.4 The Contractor 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.
- 5.5 Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then the Contractor 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.
- 6. Risk**
- 6.1 If the Contractor retains ownership of the Materials under clause 14 then:
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at the Contractor's address; or
 - (ii) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - (b) where the Contractor is to both supply and install Materials then the Contractor 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 Customer.
- 6.2 Notwithstanding the provisions of clause 6.1 if the Customer specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 6.3 The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 6.4 The installation of some appliances can cause water hammer or damage to existing pipe work. The Customer agrees to indemnify the Contractor against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.
- 6.5 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any plumbing connections (including, but not limited to, meter boxes, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective plumbing or dangerous access to crawl spaces) that the Contractor, or employees of the Contractor, reasonably form the opinion that the Customer's premises is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (**in accordance with the provisions of clause 5.2 above**) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 6.6 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where the Contractor is requested to merely clear such blockages, the Contractor can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, the Contractor will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.
- 6.7 The Customer acknowledges and agree that where the Contractor has performed temporary repairs that:
- (a) the Contractor offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) the Contractor will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 6.8 The Customer acknowledges that the Contractor is only responsible for parts that are replaced by the Contractor and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 6.9 Where the Customer has supplied goods for the Contractor to complete the Works, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. The Contractor shall not be responsible for any defects in the goods, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of goods supplied by the Customer.

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- 6.10 Notwithstanding clause 6.9 and subject to the Contractor's obligations under clause 21, the Customer accepts and acknowledges that any alleged claim made against the Contractor (where the Customer has supplied goods) shall be limited only to the Contractor's workmanship.
- 6.11 The Customer acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances;
 - (d) be damaged or disfigured by impact or scratching; and
 - (e) create undesirable smells caused by a system as a result of its normal operation.

7. Specifications

- 7.1 The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Contractor's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Contractor;
 - (b) while the Contractor may have provided information or figures to the Customer regarding the performance of the Materials, the Customer acknowledges that the Contractor has given these in good faith, and are estimates based on Clean Energy Council (CEC), Water Efficiency Labelling and Standards (WELS) scheme and/or industry prescribed estimates. The water efficiency may be less than estimates due to factors out of the Contractor's control (including, but not limited to, water pressure, water source, the mineral content of water based on geographical location, etc.).

8. Customer's Responsibilities

- 8.1 It is the intention of the Contractor and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Works to be undertaken (where in the Contractor's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 8.2 The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that the Contractor shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.

9. Surplus Materials

- 9.1 Unless otherwise stated elsewhere in this contract:
- (a) demolished Materials remain the Customer's property; and
 - (b) Materials which the Contractor brings to the site which are surplus remain the property of the Contractor.

10. Access

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

11. Underground Locations

- 11.1 Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst the Contractor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Contractor 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 11.1.

12. Compliance with Laws

- 12.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 12.3 The Customer agrees that the site will comply with any WorkSafe guidelines and/or health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12.4 Prior to commencement of any Works the Contractor shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.
- 12.5 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance maybe subject to fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies any costs associated with such an event shall be at the Customer's expense.

13. Insurance

- 13.1 The Contractor shall have public liability insurance of at least five million dollars (\$5m). It is the Customer's responsibility to ensure that they are similarly insured.

14. Title

- 14.1 The Contractor and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Customer has met all of its other obligations to the Contractor.
- 14.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 14.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Contractor and must pay to the Contractor 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 Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
 - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
 - (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
 - (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

- 15.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Customer to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 15.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor 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 Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and
 - (d) immediately advise the Contractor of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.3 The Contractor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 15.1 to 15.5.

16. Security and Charge

- 16.1 In consideration of the Contractor agreeing to supply the Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 16.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

17. Customer's Disclaimer

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

18. Defects In Materials

- 18.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford

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the Contractor an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer 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 Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials or repairing the Materials.

19. Returns

19.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 18.1; and
- (b) the Contractor has agreed in writing to accept the return of the Materials; and
- (c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Contractor 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.

19.2 Subject to clause 19.3, the Contractor may (in its discretion) accept the return of non-defective Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.

19.3 Non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.

20. Warranties

20.1 Subject to the conditions of warranty set out in clause 20.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within two (2) years of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.

20.2 The conditions applicable to the warranty given by clause 20.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Materials; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
- (c) in respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

20.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor 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.

21. Consumer Guarantees Act 1993

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

22. Intellectual Property

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

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

23. Default and Consequences of Default

23.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

23.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).

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

23.4 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.

23.5 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:

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- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
- (c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

24. Cancellation

- 24.1 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 24.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 24.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 24.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

25. Privacy Act 1993

- 25.1 The Customer authorises the Contractor or the Contractor's agent to:
 - (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 25.2 Where the Customer is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 25.3 The Customer shall have the right to request the Contractor for a copy of the information about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Customer held by the Contractor.

26. Dispute Resolution

- 26.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

27. Construction Contract Act 2002

- 27.1 The Customer hereby expressly acknowledges that:
 - (a) the Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Contractor suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Contractor 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 Contractor under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Contractor suspending work under this provision.

28. Service of Notices

- 28.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 28.2 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.

29. General

- 29.1 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.
- 29.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 29.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 29.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 29.5 The Customer agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Contractor to provide any Works to the Customer.
- 29.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 29.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.