

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Supplier” means Ben Knows Limited, its successors and assigns or any person acting on behalf of and with the authority of Ben Knows Limited.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all “Goods” or “Services” supplied by the Supplier to the Customer at the Customer’s request from time to time (where the context so permits the terms Goods or Services shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer information (including but not limited to, “Personal Information” such as: 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) and pricing details.
- 1.6 “Cookies” means small files which are stored on a users computer or device. They are designed to hold a modest amount of data (including Personal Information) specific to a particular Customer and website, and can be accessed either by the web server or the Customer’s computer or device. If the Customer does not wish to allow Cookies to operate in the background when using APL’s website, then the Customer shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.
- 1.7 “Consultant” shall mean any person or persons engaged by the Supplier to provide specialised Services on behalf of the Customer.
- 1.8 “Price” means the price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between the Supplier and the Customer in accordance with clause 7 of this Contract.

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 Services provided by the Supplier.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a customer information form with the Supplier and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.
- 2.6 The Customer acknowledges that it is their responsibility to ensure that the specifications provided to the Supplier (in writing) for the supply of Services are in sufficient detail to satisfy the Supplier’s requirements of interpretation and understanding. the Supplier shall not accept any liability for the supply of Services contrary to the Customer’s intention due to insufficient or inadequate provision of detailed specifications by the Customer.
- 2.7 Unless otherwise stated in writing, the Supplier’s quotation shall not include any miscellaneous items such as additional or back up media, cables and/or other consumables. If required, approval for any such purchases shall be sort from the Customer.
- 2.8 In the event that the Supplier is required to provide the Services urgently, that may require the Supplier to work outside normal business hours and/or outside the greater Christchurch area (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Supplier reserves the right to charge the Customer additional labour, travel and/or accommodation costs (penalty rates will apply), unless otherwise agreed between the Supplier and the Customer, a minimum 1 hour charge and call out fee will also be applicable.
- 2.9 The Customer shall as soon as practicable make available to the Supplier all information, documents, software, hardware and other particulars required by the Supplier for the provision of the Services.
- 2.10 If the Supplier has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved (including a call out fee as per clause 2.9, where such a request is received outside the Supplier’s normal working hours and a physical visit is required) will be charged to the Customer.
- 2.11 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the Price with alternative Goods as per clause 7.2, subject to prior confirmation and agreement of both parties. the Supplier also reserves the right to halt all Services until such time as the Supplier and the Customer agree to such changes. the Supplier shall not be liable to the Customer for any loss or damage the Customer suffers due to the Supplier exercising its rights under this clause.
- 2.12 Unless expressly stated by the Supplier, the quoted Price does not include the removal of the Customer’s sensitive data. In the event the Customer request such Services, the Price will be adjusted accordingly to include the Services in accordance with clause 7.2.
- 2.13 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give the Supplier 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 details, change of directors, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer’s failure to comply with this clause.

5. The Supplier’s Responsibilities

- 5.1 The Supplier must, when providing the Services, perform the Services in an efficient and professional manner, engaging personnel with suitable training, experience and expertise, and exercise due care, skill and attention. If the Supplier becomes aware of any matter which may change the scope or timing of the Services, it shall provide the Customer with reasonable written notice in relation to the change, and in any event provide such notice within ten (10) business days of first becoming so aware.
- 5.2 If the Supplier is required to exercise their professional judgment between the Customer and a third party with whom the Customer has a contract then they shall do so independently and as required by the terms of that contract.
- 5.3 The Supplier shall use all reasonable efforts to inform themselves, of the Customer’s requirements for the Services and for that purpose the Supplier shall consult the Customer throughout the performance of the Services.
- 5.4 If the Supplier considers that the information, documents and other particulars made available to the Supplier by the Customer are not sufficient to enable the Supplier to provide the Services in accordance with this Contract. the Supplier may advise the Customer who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.

5.5 The Supplier shall perform the Services in a timely manner to the extent that it is within the Supplier's control to do so.

6. Customer's Responsibilities

- 6.1 The Customer shall comply with the terms and conditions of this Contract, and any applicable laws, regulations, standards and codes.
- 6.2 The Customer will provide the Supplier with all specifications, information and instructions that the Supplier reasonably requires for the provision of the Services to the Customer.
- 6.3 The Customer shall not resupply or resell the Services, or assign the benefit of this Contract, without our prior written consent.
- 6.4 The Customer must follow the Supplier's reasonable directions regarding the use of the Goods/Services.
- 6.5 The Customer must ensure that all specifications, information and instructions you provide to the Supplier is accurate, correct, current and complete.
- 6.6 If the Customer must use the Services for lawful purposes only, and without being a nuisance to any third parties.
- 6.7 The Customer shall be responsible for any of the Customer's agents, employees, contractors or other service providers who have access to the Services.
- 6.8 The Customer shall report to the Supplier (as soon as practically possible) when the Customer, or a reasonable person in the position of the Customer, has reason to believe that there has been unauthorised use of the Services.
- 6.9 The Customer is responsible for implementing and maintaining the security of their own network (including VOIP services) or equipment and shall be liable for all charges in relation to the unauthorised use of the Services as a result of a breach of that security (e.g. viral infections, attacks from the internet, denial; of severe attacks, PABX hacking), account/password misuse, SPAM and misuse of the Services by any third party, including employees and contractors.
- 6.10 The Customer to be responsible for Health and Safety regulation and site compliance for site location.

7. Price and Payment

- 7.1 At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Customer; or
- (b) the Supplier's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 7.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Services (including any variation to the Customer's brief or specifications) is requested; or
- (b) if during the course of the Services, the Goods are not or cease to be available from the Supplier's third party suppliers, then the Supplier reserves the right to provide alternative Goods (or components of the Goods); or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable circumstances including, but not limited to, poor weather conditions, limitations to accessing the worksite, additional defects/software or hardware incompatibilities which are found on closer inspection, delays in delivery of Goods from the Supplier's third party suppliers, additional worksite visits required, health hazards/safety considerations which are only discovered during the provision of the Services; or
- (d) in the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control.
- 7.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At the Supplier's sole discretion a non-refundable deposit may be required.
- 7.5 Payment for any non-stocklist or bespoke Goods from the Supplier's third party supplier is due payable at the time the Customer places an order with the Supplier.
- 7.6 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- (a) by way of instalments/progress payments in accordance with the Supplier's payment schedule; or
- (b) on delivery of the Goods; or
- (c) before delivery of the Goods; or
- (d) payment for approved Customers shall be due either twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) 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 Supplier.
- 7.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, eftpos, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Customer and the Supplier.
- 7.8 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 7.9 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Supplier is a claim made under the Construction Contracts Act 2002.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for providing the Supplier's Services. 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.

8. Access

- 8.1 The Customer shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the Services (including, gain signatures for required documents, and for the delivery and installation of the Goods). the Supplier shall not be liable for any loss or damage (including, but not limited to, damage to pathways, trees, shrubs, pathway or grassed areas, driveways etc) unless due to the negligence of the Supplier.
- 8.2 The Customer, or the Customer's authorised representative or where required, additional personnel agrees to be present at the worksite when and as reasonably requested by the Supplier and its employees, contractors and/or agents (including, but not limited to where the Supplier is requested to the site outside their normal hours of operation).
- 8.3 If the Customer, the Customer's authorised representative or where required, additional personnel, as per clause 8.2, are not able to be present, then if the Supplier requires an access code, to gain access to the work site, this code should be a disposable code only. If a disposable code cannot be supplied to the Supplier, the Supplier may refuse to attend the work site, with no penalty, loss or damage whatsoever to be applied by the Customer to the Supplier.

9. Provision of the Services

- 9.1 At the Supplier's sole discretion delivery of the Services shall take place when the Services are supplied to the Customer at the Customer's nominated address, even if the Customer is not present at the address.
- 9.2 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.
- 9.3 The Supplier may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 9.4 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Supplier'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 Services; or
- (c) notify the Supplier that the site is ready

- 9.5 The Customer acknowledges and accepts that where the Customer wishes to postpone the Services the Supplier must be notified within twenty-four (24) hours of the mutually agreed commencement date. Where such notice is received inside this timeframe, the Supplier reserves the right to charge a reasonable fee for the delay in the commencement of the Services.
- 9.6 Any time specified by the Supplier for delivery of the Services is an estimate only and the Supplier 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 Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Services as agreed solely due to any action or inaction of the Customer then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

10. Repair Notice

- 10.1 Where the Customer is a consumer within the meaning of the Consumer Guarantees Act 1993, this clause constitutes a Repair Notice given under this legislation and the Customer acknowledges that:
- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. ("User-Generated Data"). It is the sole responsibility of the Customer to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
- (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.

11. Product Specifications

- 11.1 The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Supplier's or 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 Supplier; and
- (b) while the Supplier may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that the Supplier has given these in good faith, and are estimates based on optimal operating conditions, information from Consultants, changes to the design brief being requested by the Customer, any other variation, to this Contract.
- 11.2 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

12. Site Visits

- 12.1 Access for site visits are to be made during normal working hours, unless otherwise agreed to prior to acceptance by the Customer of any quotation submitted by the Supplier.
- 12.2 It shall be the Customer's responsibility to make the site available on the agreed dates and times. If the Services are delayed or interrupted by the failure of the Customer to make the site available as per the schedule agreed to between the Supplier and the Customer, any additional costs will be invoiced to the Customer, as per clause 7.6.

13. Risk

- 13.1 Risk of damage to or loss of the Goods passes to the Customer on delivery and the Customer must insure the Goods on or before delivery.
- 13.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 13.3 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 13.4 Where the Supplier has effected delivery all risk passes to the Customer as per clause 9.1 and the Customer claims the Goods have been stolen it shall be the Customer's responsibility to notify the police and forward evidence to the Supplier, this shall not excuse the Customer from fulfilling their financial obligations under this Contract.
- 13.5 Where the Supplier gives advice or recommendations to the Customer, or the Customer's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action or product selection not being fit for purpose or the condition of materials supplied by the Customer being inferior, etc.), and such advice or recommendations are not acted upon, then the Supplier shall require the Customer or their agent to authorise commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services nor will such losses or damages be deemed a defect.
- 13.6 Where the performance of any contract with the Customer requires the Supplier to obtain products and/or services from a third party, the Contract between the Supplier and the Customer shall incorporate, and shall be subject to, the conditions of supply of such products and/or Services to the Supplier, and the Customer shall be liable for the cost in full including the Supplier's margin of such products and/or Services.
- 13.7 The Customer will use any third-party software supplied by the Supplier, and identified as such, strictly in terms of the licence under which it is supplied.
- 13.8 All third-party software and/or hosting Services is provided at the Customer's own risk and is not in any way warranted by the Supplier, nor shall the Supplier be in any way responsible for the implementation or effects of any "patches", "updates", or "fixes" offered by the manufacturer of the software. Further, the Customer agrees to indemnify the Supplier against all consequential loss arising out of any defect or failure in products (including delivery time-lags), hosting services or software supplied by any third party.
- 13.9 The Supplier may supply Goods to the Customer where it is required for the provision of Services. The Customer may request upgrades to or newer versions of the Goods and the Supplier will advise the Customer of the availability of such Goods and the additional cost associated with the supply of the Goods.
- 13.10 The Supplier shall not be liable for any loss or damage to the Customer's software or hardware caused by any 'updates' provided for that software.
- 13.11 The Supplier shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from the Services provided by the Supplier. It is the sole responsibility of the Customer to back-up any data which they believe to be important, valuable, or irreplaceable prior to the Supplier providing the Services. The Customer accepts full responsibility for the Customer's software and data and the Supplier is not required to advise or remind the Customer of appropriate backup procedures.
- 13.12 The Supplier shall not be liable whatsoever for:
- (a) delays caused by any other third party suppliers that impacts on the provision of the Services by the Supplier; or
- (b) products and/or works supplied by the Customer and/or any other third party; or
- (c) any defect or damage resulting from incorrect or faulty installation carried out by any other third party
- 13.13 If the Customer instructs the Supplier to rectify any damage caused by any other third party, this will become a variation to the original quotation and will be charged at the Supplier normal hourly rate.
- 13.14 The Customer acknowledges that:
- (a) the Supplier holds no liability and offers no warranty for installation Services provided by other contractors appointed by the Customer; and
- (b) where the Customer has supplied materials for the Supplier to complete the Services, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

14. Underground/Hidden Locations

- 14.1 Prior to the Supplier commencing any work the Customer must advise the Supplier of the precise location of all underground/hidden services on the site and clearly mark the same. The underground/hidden mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 14.2 Whilst the Supplier will take all care to avoid damage to any underground/hidden services the Customer agrees to indemnify the Supplier 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 13.1.

15. Compliance with Laws

- 15.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 15.2 Notwithstanding clause 14.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Supplier agrees at all times comply with sections 29 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or if in the event that they may be acting as a subcontractor for the Customer's where the Customer has engaged a thirty party head contractor.

16. Title

- 16.1 The Supplier and the Customer agree that where it is intended that the ownership of the Goods is to pass to the Customer that such ownership shall not pass until:
- the Customer has paid the Supplier all amounts owing for the Services; and
 - the Customer has met all other obligations due by the Customer to the Supplier in respect of all Contracts between the Supplier and the Customer.
- 16.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Goods shall continue.
- 16.3 It is further agreed that:
- the Customer is only a bailee of the Goods and must return the Goods to the Supplier immediately upon request by the Supplier; and
 - the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
 - the Customer must not sell, dispose, or otherwise part with possession of the Goods. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of sale of the Goods on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand; and
 - the Customer should not convert or process the Goods 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 Supplier and must dispose of or return the resulting product to the Supplier as the Supplier so directs; and
 - the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier; and
 - the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.

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

- 17.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 17.2 The Customer undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
 - indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; and
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier.
- 17.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 17.1 to 17.5.
- 17.7 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

18. Security and Charge

- 18.1 In consideration of the Supplier agreeing to supply Services, 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).
- 18.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs of a solicitor and own Customer basis incurred in exercising the Supplier's rights under this clause.
- 18.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Customer's behalf.

19. Defects

- 19.1 The Customer shall inspect the Services on delivery and shall within thirty (30) days of delivery notify the Supplier of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 19.2 For defective Services, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Services or rectifying the Services provided that the Customer has complied with the provisions of clause 18.1.
- 19.3 The Supplier may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight charges.

20. Confidentiality

- 20.1 Subject to clause 20.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.
- 20.2 Both parties agree to:
- use the Confidential Information of the other party only to the extent required for the purpose it was provided; and
 - not copy or reproduce any of the Confidential Information of the other party in anyway; and
 - only disclose the other party's Confidential Information to employees and contractors that need access to the information and have agreed to keep it confidential and it's legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or regulator.
- 20.3 The Customer accepts and acknowledges that in the event the Supplier acts as an agent on behalf of the Customer with a third party, the Customer agrees to introduce the Supplier as their agent to obtain any additional information or Confidential Information that may be required to complete the Service.
- 20.4 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.

21. Consumer Guarantees Act 1993

21.1 If the Customer is acquiring Services 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 Services by the Supplier to the Customer.

22. Intellectual Property

22.1 Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

22.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

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

23. Fixed Contract

23.1 The Supplier shall as per clause 9.4 above be entitled to claim an extension to the term of the Services in the event of delays resulting from any matter whatsoever which is not entirely under the control of the Supplier. These matters shall include, but are not limited to delays caused by:

- (a) response(s) to information request(s) made by the Supplier to the Customer not being available when required; or
- (b) approval from authorities response times; or
- (c) information from Consultants; or
- (d) changes to the design brief being requested by the Customer; or
- (e) any other variation, to this Contract, including, but not limited to, poor weather conditions, etc.

23.2 In the event that there is a break in the continuity of Services being provided by the Supplier due to the Customer's instructions or all Services are suspended by the Supplier pursuant to overdue payments, then fees for Services completed at the time of such a break or suspension shall be a fee deemed to be reasonable to the Supplier, as a termination fee, which will be duly charged to the Customer.

24. Default and Consequences of Default

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

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

24.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, 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 Supplier under this clause 24, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

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

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

25. Cancellation

25.1 Without prejudice to any other rights or remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within thirty (30) working days of receipt by the Customer of such notice/s) then the Supplier may suspend the Services immediately. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

25.2 The Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

25.3 The Supplier reserves the right to suspend Services if payment is not received within 7 days of invoice payment date.

25.4 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

26. Privacy Policy

26.1 All emails, images or other recorded information held or used by the Supplier is Personal Information as defined and referred to in clause 26.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

26.2 Notwithstanding clause 26.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customers:

- (a) IP address, browser, email client type and other similar details; and
- (b) tracking website usage and traffic; and
- (c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information (collectively "Personal Information"). If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wish to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customers web browser, including removing Cookies by deleting them from the browser history when existing the site.

26.3 The Customer authorises the Supplier or the Supplier's agent to:

- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (e.g. 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 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 Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

26.4 Where the Customer is an individual the authorities under clause 26.3 are authorities or consents for the purposes of the Privacy Act 1993.

26.5 The Customer shall have the right to request the Supplier for a copy of the Personal Information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect Personal Information about the Customer held by the Supplier.

27. Warranty

27.1 Subject to the conditions of warranty set out in clause 27.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within three (3) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.

27.2 The conditions applicable to the warranty given by clause 27.1 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 Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines detailed in the Customer care manual provided by the Supplier; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
 - (c) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 27.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

28. Liability Limitations

28.1 Except as is specified in clause 19, the liability limitations of the Supplier, its partners, associates, and employees shall exclude any indirect loss and/or expense (including, but not limited to, loss of profit, loss of business opportunity and payment of liquidated damages, etc.) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions.

28.2 The maximum liability of the Supplier under this Contract shall at no time exceed the amount of Professional Indemnity insurance cover carried by the Supplier.

28.3 The Customer agrees to indemnify the Supplier, (including its partners, associates or employees) and any other person who may be sought to be made liable in excess of the limit of liability described in clause 28.1 in respect of any activity arising from, or connected with this Contract in respect of any claim of whatsoever kind, that may be made by any person and any costs and expenses that may be incurred by the Supplier.

28.4 The liability of the Supplier to the Customer shall expire twelve (12) months from the issue of the last invoice relevant to the particular project, unless in the meantime the Customer has made a claim in writing to the Supplier, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.

29. Service of Notices

29.1 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; or
 - (b) by leaving it at the address of the other party as stated in this Contract; or
 - (c) by sending it by registered post to the address of the other party as stated in this Contract; or
 - (d) if sent by email to the other party's last known email address.
- 29.2 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.

30. Trusts

30.1 If the Customer 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 Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust; or
 - (ii) any alteration to or variation of the terms of the Trust; or
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

31. General

31.1 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 the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

31.2 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.

31.3 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 Christchurch Courts of New Zealand.

31.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

31.5 The Customer cannot licence or assign without the written approval of the Supplier.

31.6 the Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.

31.7 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Services to the Customer.

31.8 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party (referenced as Force Majeure).

31.9 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.