
Signwise Auckland – Terms & Conditions of Trade

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 **“Agent”** means Signwise Auckland (2016) Limited T/A Signwise Auckland, its successors and assigns or any person acting on behalf of and with the authority of Signwise Auckland (2016) Limited T/A Signwise Auckland.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Agent to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Goods”** means all Goods or Services supplied by the Agent to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“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, client 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 user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using the Agent’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Agent and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Agent and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, the Agent reserves the right to refuse Delivery.
- 2.5 The Client is strongly recommended to place an order in writing. Orders should clearly state the Client’s particular requirements. The Agent will not be responsible for errors or omissions due to oversight or to misinterpretation of the Client’s verbal instructions.
- 2.6 Quotations are only for work according to original specifications. If through the Client’s error, or omission, work has to be redone or alterations or additions to specifications are required, then the Agent may make an additional charge. In the event that an order is cancelled or suspended by the Client, then the Agent may immediately require the Client to pay for work done to the date of cancellation or suspension.
- 2.7 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 Client acknowledges and accepts that the Agent 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 Agent 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 Agent 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 Agent; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 The Client acknowledges that the Agent shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Agent, that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to the Agent for all additional costs incurred by the Agent (including the Agent’s profit margin) in providing any Services, or variation/s requested thereto by the Client’s duly authorised representative.

5. Change in Control

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

6. Price and Payment

- 6.1 At the Agent's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Agent to the Client; or
 - (b) the Agent's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Agent reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from the Agent's third party suppliers, then the Agent reserves the right to provide alternative Goods; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, availability of machinery, obscured site/building defects which require remedial work, health hazards/safety considerations (including the discovery of asbestos), inaccurate measurements provided by the Client, delays or non-approval in obtaining council or local authority permits, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
 - (e) in the event of increases to the Agent in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates, increases to the Agent in the cost of taxes, levies, freight and insurance, etc.) which are beyond the Agent's control.
- 6.3 The Client shall be required to respond to any variation submitted by the Agent within ten (10) working days. Failure to do so will entitle the Agent to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Agent's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Agent, which may be:
- (a) on Delivery of the Goods;
 - (b) before Delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with the Agent's payment schedule;
 - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (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 Client by the Agent.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Agent.
- 6.7 The Agent may in its discretion allocate any payment received from the Client towards any invoice that the Agent determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Agent may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Agent, payment will be deemed to be allocated in such manner as preserves the maximum value of the Agent's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Agent is a claim made under the Construction Contracts Act 2002.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Agent an amount equal to any GST the Agent must pay for any supply by the Agent under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Accuracy of Client's Plans and Measurements

- 7.1 In the event the Client gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Client):
- (a) it is the Client's responsibility to verify the accuracy of the information before the Client or the Contractor places an order based on the information. The Contractor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause;
 - (b) the Contractor shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting therefrom.
 - (c) In the event the Contractor needs to make additional worksite visits due to inaccurate information supplied by the Client, all costs associated with such additional visits shall be the invoiced as a variation in accordance with clause 6.2.

8. Delivery of Goods

- 8.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Agent's address; or
 - (b) the Agent (or the Agent's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Agent claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Agent's control, including but not limited to any failure by the Client to:
- (a) make a selection; or

- (b) have the site ready for the Services; or
- (c) notify the Agent that the site is ready.
- 8.3 At the Agent's sole discretion the cost of Delivery is in addition to the Price.
- 8.4 Any time specified by the Agent for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Agent will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8.5 The Agent may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9. Risk**
- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 9.3 If the Client requests the Agent to leave Goods outside the Agent's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 9.4 All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
- 9.5 Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.
- 9.6 Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at its request for the Services.
- 9.7 The Agent shall be under no liability whatever to the Client for any variation (beyond the reasonable control of the Agent) in colours between the approved prototype and the finished Goods.
- 9.8 Where the performance of any contract with the Client requires the Agent to obtain Goods or Services from a third party, the contract between the Agent and the Client shall incorporate and shall be subject to the conditions of supply of such Goods and Services to the Agent, and the Client shall be liable for the cost in full including the Agent's margin of such Goods or Services.
- 9.9 Whilst every care is taken by the Agent to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods. The Agent shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an extra.
- 9.10 The Agent is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by the Agent to match virtual colours with physical colours, the Agent will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product.
- 9.11 While every effort will be taken by the Agent to match PMS colours, the Agent will take no responsibility for any variation due to substrates, half tones and/or detailed graphics between sale samples (including but not limited to virtual or physical samples) and the final product.
- 9.12 The Agent shall not be held liable for inks wearing off through general wear and tear.
- 9.13 Where the Client supplies materials, adequate quantities shall be supplied by the Client to cover spoilage. Sheets and other materials shall not be counted or checked when received unless requested by the Client in writing. An additional charge may be made by the Agent in respect of any such counting or checking requested by the Client.
- 9.14 Where materials or equipment are supplied by the Client for the provision of Services the Agent shall accept no liability for imperfect work caused by defects in, or the unsuitability of, such materials or equipment for the Services.
- 9.15 In the case of property and materials left with the Agent without specific instructions, the Agent shall be free to dispose of them at the end of twelve (12) months after his receiving them and to accept and retain any proceeds gained from such disposal to cover the Agent's costs in holding and handling such items.
- 9.16 Any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Client which is deemed necessary by the Agent to ensure correctly finished work shall be invoiced as an extra.
- 9.17 In the event that the Client believes that the Agent has scratched the vehicle during the installation/application process of the Goods, the Client shall within twenty-four (24) hours of delivery (time being of the essence) notify the Agent of any alleged defect or damage. The Client shall afford the Agent an opportunity to inspect the vehicle within a reasonable time following delivery. If the Client fails to comply with clause 9.17, the vehicle shall be presumed to be free from any defect or damage.
- 9.18 The Client acknowledges that it is the Client's responsibility to remove all personal/valuable items from the vehicle prior to the Agent carrying out their Services. The Agent shall not be liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle.
- 9.19 The Client acknowledges and accepts that the Goods supplied by the Agent may experience shrinkage or may move after installation/application, which is considered normal practice for these types of Goods and thereby not covered by the Agent's as a defect or under warranty. The Agent shall not be liable for any loss or damage in this event, where circumstances are beyond the control of the Agent.
- 9.20 The Client accepts that in the event that the vehicle is stored for any period on the Agent's premises that it is done so at the Client's own risk and it shall be the client's responsibility to ensure their vehicle and its contents are insured adequately or at all.
- 9.21 The Client acknowledges that the Agent can only provide its Services on a vehicle in its current state as supplied to the Agent therefore the Agent shall not accept any responsibility for the workmanship of any third party that has worked on a Client's vehicle prior to Services being undertaken by the Agent (including, but not limited to, poor paintwork or repairs).
- 9.22 The Client shall inform the Agent of any potential delays that may affect the approval of Services and/or amendments to be communicated in a timely manner, including, but not limited to the Client's authorisation process.
- 9.23 The Client acknowledges and accepts that:
 - (a) the Agent cannot guarantee the condition of pre-existing paintwork on vehicles or other materials to which vinyl Goods are to be attached and therefore the Agent shall not be held liable for any damage that may occur to the paintwork/surface where vinyl adhesives are removed or applied; and

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(b) the adhesion of vinyl signs may be impaired where a paint protection coating has been applied. Furthermore, as such paint protections coating are unable to be removed, adhesion failure shall not be deemed to be a defect in this instance.

10. Design Concepts and Projects

- 10.1 Any indication provided by the Agent as to the duration of the project shall be considered as an estimate and shall commence from the date that cleared deposit funds (where applicable) are received by the Agent.
- 10.2 All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
- 10.3 The Client acknowledges that any artwork provided by the Agent may not be to scale. In addition, whilst the Agent will endeavour to provide an accurate representation of any artwork, the Client accepts that some discrepancy may occur between on-screen and/or photographic views and the physical artwork when viewed in an electronic form.

11. Artwork and Proof Reading

- 11.1 Whilst every care is taken by the Agent to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods. The Agent shall accept no liability whatsoever for any errors not picked up and/or corrected by the Client in the final proof reading.
- 11.2 Any amendments to the artwork or proofs shall be charged at the Agent's standard hourly rate.
- 11.3 Any artwork provided by the Agent cannot be reproduced by the Client until payment has been received by the Agent.

12. Access

- 12.1 The Client shall ensure that the Agent has clear and free access to the installation site at all times to enable them to undertake the Services. The Agent 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 Agent.

13. Compliance With Laws

- 13.1 The Client and the Agent shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.3 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Agent agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.

14. Title

- 14.1 The Agent and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Agent all amounts owing to the Agent; and
- (b) the Client has met all of its other obligations to the Agent.
- 14.2 Receipt by the Agent 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 until ownership of the Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Agent on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Agent and must sell, dispose of or return the resulting product to the Agent as it so directs;
- (e) the Client irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods;
- (f) the Agent may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Agent; and
- (h) the Agent may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Agent for Services – that have previously been supplied and that will be supplied in the future by the Agent to the Client.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent 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 Agent 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;

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- (c) 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 Agent; and
 - (d) immediately advise the Agent of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.3 The Agent and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Agent, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by the Agent under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of the Agent agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 16.3 The Client irrevocably appoints the Agent and each director of the Agent as the Client'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 Client's behalf.
- 17. Defects**
- 17.1 The Client shall inspect the Goods on Delivery and shall within two (2) days of Delivery (time being of the essence) notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) the Agent has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and
 - (c) the Agent will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 The Agent will not accept the return of Goods for credit.
- 18. Warranty**
- 18.1 Subject to the conditions of warranty set out in clause 18.2 the Agent warrants that if any defect in any workmanship of the Agent becomes apparent and is reported to the Agent within twelve (12) months of the date of Delivery (time being of the essence) then the Agent will either (at the Agent's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Agent; 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 Agent shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Agent's consent.
 - (c) in respect of all claims the Agent shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 18.3 For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent 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.
- 19. Consumer Guarantees Act 1993**
- 19.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Agent to the Client.
- 20. Intellectual Property**
- 20.1 Where the Agent has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Agent. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Agent.

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- 20.2 The Client warrants that all designs, specifications or instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
- 20.3 The Client agrees that the Agent may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Agent has created for the Client.
- 21. Default and Consequences of Default**
- 21.1 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 Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes the Agent any money the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Agent may have under this Contract, if a Client has made payment to the Agent, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Agent under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Agent;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 22. Cancellation**
- 22.1 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Agent may suspend or terminate the supply of Goods to the Client. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
- 22.2 The Agent may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any money paid by the Client for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 23. Privacy Policy**
- 23.1 All emails, documents, images or other recorded information held or used by the Agent is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. The Agent 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" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Agent acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Agent that may result in serious harm to the Client, the Agent will notify the Client 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 Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Agent in respect of Cookies where the Client utilises the Agent's website to make enquiries. The Agent agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Agent when the Agent sends an email to the Client, so the Agent may collect and review that information ("collectively Personal Information")
- If the Client consents to the Agent's use of Cookies on the Agent's website and later wishes to withdraw that consent, the Client may manage and control the Agent's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client authorises the Agent or the Agent's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.

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- (b) disclose information about the Client, whether collected by the Agent from the Client directly or obtained by the Agent from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request the Agent for a copy of the Personal Information about the Client retained by the Agent and the right to request the Agent to correct any incorrect Personal Information about the Client held by the Agent.

24. Service of Notices

- 24.1 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.
- 24.2 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.

25. Trusts

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Agent may have notice of the Trust, the Client covenants with the Agent as follows:
 - (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Agent (the Agent will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

26. Suspension of Services

- 26.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
 - (a) the Agent has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Agent by a particular date; and
 - (iv) the Agent has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if the Agent suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Agent 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 Agent under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Agent suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes the Agent from continuing the Services or performing or complying with the Agent's obligations under this Contract, then without prejudice to the Agent's other rights and remedies, the Agent may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Agent as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 26.2 If pursuant to any right conferred by this Contract, the Agent suspends the Services and the default that led to that suspension continues unremedied subject to clause 21 for at least ten (10) working days, the Agent shall be entitled to terminate the Contract, in accordance with clause 21.1.

27. General

- 27.1 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.
- 27.2 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 Auckland Courts, New Zealand.
- 27.3 The Agent shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.4 The Agent may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.5 The Client cannot licence or assign without the written approval of the Agent.
- 27.6 The Agent may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Agent's sub-contractors without the authority of the Agent.
- 27.7 The Client agrees that the Agent may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Agent to provide Goods to the Client.
- 27.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.9 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.