Falcon Electrical Limited – Terms & Conditions of Trade

- Definitions "Contract" means the terms and conditions contained herein, together with any 1. 1.1 quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract. "Company" means Falcon Electrical Limited, its successors and assigns.
- Customer means the person's network requesting the Successors and assigns. Customer means the person's, entities or any person acting on behalf of and with the authority of the Customer requesting the Company to provide the Works as 6.5 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 spe (a)
 - severally; and(b) if the Customer is a partnership, it shall bind each partner jointly and severally;
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee;
 - (d) includes the Customer's executors, administrators, successors and permitted
- (d) includes the Customer's executors, administrators, successors and permitted assigns. Works' means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Company to the Customer at the Customer's 6.7 request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other). 'Worksite' means the address nominated by the Customer to which the Materials are to be supplied by the Company. 'Intended Use' means a product and the use thereof, for which the product is intended to be or ic reasonable likely to be associated with the Works' 14
- 1.5
- 16
- Intended to be, or is reasonably likely to be, associated with the Works. "Non-Conforming Product" means products that are regarded as Non-Conforming 6.8 for an Intended Use if, when associated with a building: 1.7
- for an Intended Use if, when associated with a building: (a) the product is not, or will not be, safe; or (b) does not, or will not, comply with the relevant regulatory provisions; or (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product. **Cookies** means small flies which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Intormation) specific to a particular client and website, and can be accessed either by the web server or the background when using the Company's website, then the Customer shall have the background when using the Company's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable **Proce'** means the Price payable (plus any Goods and Services Tax ("GST") where 7. applicable for the Works as agreed between the Company and the Customer in 7.1. accordance with clause 6 below. 72
- 1.9 72

2. 2.1

- Acceptance The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works. In the event of any inconsistency between the terms and conditions of this Contract 22
- and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail. Any amendment to the terms and conditions contained in this Contract may only be 7.3 2.3
- 2.4
- Any anterlouterit to writing by the consent of both particles. The Contract may only be 7.3 amended in writing by the consent of both particles. The Customer acknowledges that the supply of Works on credit shall not take effect 7.4 until the Customer has completed a credit application with the Company and it has been approved with a credit limit established for the account. In the event that the supply of Works requested exceeds the Customer's credit limit 7.5 and/or the account exceeds the payment terms, the Company reserves the right to fixed other account exceeds the payment terms, the Company reserves the right to the context of the account exceeds the payment terms, the Company reserves the right to account the account exceeds the payment terms, the Company reserves the right to the company reserves the right to account the account exceeds the payment terms, the Company reserves the right to account the account exceeds the payment terms, the Company reserves the right to account the account exceeds the payment terms of the account the terms of the account the account the account terms of 2.5
- 2.6

 - and/or the account exceeds the payment remove the company to:
 In the event that the Customer requests the Company to:
 (a) make an emergency Call-Out for critical equipment after hours or causes the company to cancel or reschedule other work then the Company reserves the right to charge a minimum Call-Out fee of the labour cost plus a per kilometre traveled rate plus any Materials used to undertake the Works unless the Company staff to work outside 8.
 (b) provide the Works urgently, that may require the Company staff to work outside 8. normal business hours (including but not limited to working, through lunch 0.
 (b) provide the Works urgently, that may require the Company reserves the right to charge the Customer additional labour costs (penalty rates will apply at time and a half normal rules), unless otherwise agreed between the Company and the Customer. 8.2
- If the Constomer is been requested by the Customer to diagnose a fault that requires 2.7
- In the Company has been requested by the Customer to diagnose a ratio that requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead. 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 the to the total the total commercial case of the contract and commercial case of the total total that the total total commercial case of the contract and commercial case of the contract a 2.8

3. 3.1

- Errors and Omissione The Customer acknowledges and accepts that the Company shall, without prejudice, 8.3 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 Company in the formation 8.4 and/or administration of this Contract, and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Works. In the event such an error and/or or mission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Company; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.2

Authorised Representatives

Authorised Representatives The Customer acknowledges that the Company shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to the Company, that person shall have the full authority of the Customer to order any Works, and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to the Company for all additional costs incurred by the Company (including the Company's providing any Works, or variation's requested thereto by the Customer's duly authorised 9. resentative

Change in Control

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

- Price and Payment At the Company's sole discretion the Price shall be either: (a) as indicated on invoices provided by the Company to the Customer in respect of Works performed or Materials supplied; or any the Customer in respect of the Company's quoted Price (subject to clause 6.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation 9.2 in writing within thirty (30) days. The Company reserves the right to change the Price: (a) if a variation to the Materials which are to be supplied is requested; or (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to 9.3
- 6.2

 - specifications) is requested; or
 (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to 9.3 accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, safety considerations (discovery of absobsc, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building/Works, may building/Work of the discovered on commencement of the Works; or
 (d) in the event of increases to the Company in the cost of labour or materials which are beyond the Company's control.
 Variations will be charged for on the basis of the Company's invoice. The Customer shall be required to as variations subted by the Customery 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.
 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:

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- (a) for certain approved Customers, due twenty (20) days following the end of the 9.5 month in which a statement is posted to the Customer's address or address for
- (a) for cartain approved Customers, due twenty (20) pays toruxmup are and one of motions;
 (b) the date specified on any invoice or other form as being the date for payment; or (c) 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 Company.
 At the agreement of both parties, payment of the Price mary be subject to retention 9.6 by the Customer of all other of the Price mary be subject to retention 9.6 by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Referition Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A sections 18(a) to 18(i) of the Construction Contracts. Amendment Act 2015 and as such no Retention Money shall be use other than to remedy defects in the 9.7 performance of the Company is obligations under the Contract.
 Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and word so at the time of receipt or all my invoice that the Company gues any advost and the time of meany payments all coation by the Customer the Customer for the Customer shall hold the Act any payment received from the Customer reviewed from the Customer any payments any payments any payments. The Customer shall hold the any payment will be deemed to be allocated in such manner as preserves the maximum value of the Company the company may re-allocate any payment will be deemed to be allocated in such manner as preserves the maximum value of the Company to the with the set of agrinest. The Customer shall hold the Action the Price, any sums owed or claimed to be weed to the Customer from the adute for any sums owed or claimed to sevel to the Custome

- invoice. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

- Provision of the Works Subject to clause 7.2 it is the Company's responsibility to ensure that the Works start as scon as it is reasonably possible. The Works commencement date will be put back and the completion date extended
- The Works commencement due were been that the Company claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Company's control, including but not limited to any failure by the Customer to:
- make a selection: or

- (a) make a selection; or (b) have the Vorksite ready for the Works; or (c) notify the Company that the Worksite is ready. At the Company's sole discretion, the cost of delivery is either included in the Price. The Company may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- Instalment shall be involced and pain in accordance many segments and conditions. Any time specified by the Company for delivery of the Works is an estimate only and 9.8 the Company will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Company is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then the Company shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials. 10.1

Worksite Access and Condition

- Worksite Access and Condition
 The Company is not responsible for the removal of rubbish from or clean-up of the building/construction. Worksite/s. All rubbish generated by the Company will be placed in a designated area appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
 It is the intention of the Company and agreed by the Customer that:

 (a) the Customer shall ensure that the Company has clear and free access to the 10.2 Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Company shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to 11.
 (b) its the Customer's responsibility to provide the Company, while at the Worksite.
 The Customer agrees to be present at the Worksite and as reasonably requested by the Company and its employees, contractors and/or gents.

- Hequested by the company back to experiment the Worksite Inductions (a) in the event the Customer requires an employee or sub-contractor of the Company to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay the Company's standard (and/or overtime, if applicable) hourly labour rate; or 11.3
- or where the Company is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out the Company's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by the Company. (b) 114

Risk

Please note that a larger print version of these terms and conditions is available from the Company on request.

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- any had 11.7

Risk
If the Company retains ownership of the Materials under clause 12 then:
(a) where the Company is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
(i) the Customer or the Customer's nominated carrier takes possession of the Materials at the Company's address; or
(ii) the Materials are delivered by the Company or the Company's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
(b) where the Company is to both supply and install Materials then the Company shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
Notwithstanding the provisions of clause 9.1 if the Customer specifically requests the faterois to an unattended location then such materials shall always be left as ole risk of the Customer and it shall be the Customer to specifically requests the Materials are insured adequately or at all. In the event that ensite is shall always be an unattended location then such materials shall always be an unattended location the nucleon of the dustrials are insured adequately or at all. In the event that such Materials are the dustrials are insured adequately or at all. In the event that such Materials are been dustrial the nucleon such materials then the dustrials are insured adequately or at all. In the event that such Materials are the dustrials are insured adequately or at all. In the event that such Materials are insured adequately or at all. In the event that such Materials are insured adequately or at all. In the event that such Materials are insured adequately or at all. In the event that such Materials and the ordinate and the ordinate adecuately o the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the

the Materials are inSured adequately or at all. In the verification of the Materials shall be at the Lost, damaged or destroyed them replacement of the Materials shall be at the Customer's expense. The Company shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Company accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical **12**. connections (including, but not limited to, meter boxes, main switches, circuit **121**. the statement and the installation of the Materials are to be affixed are able to withstand the installation of the Materials are to be affixed are able to a state and the installation of the Materials are to be installed. If, for any reason (including) but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) the Company reasonally forms the opinion that the Customer's property **12.2** is not safe for the installation of the Materials in accordance with clause 7.2) until the **13.3** Company is astified that it is such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price. supplied shall be treated as a variation and be charged for in addition to the Price

Page 1 of 2

In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify the Company immediately upon any proposed changes. The Customer agrees to fluilly the indemnify the Company against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause

6.2. Where the Company gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the Worksite for the installation of the Materials or similar works and such advice or recommendations are not acted upon then the Company shall require the Customer or their agent to authorise commencement of the Works in writing. The Company shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.

- Commencement of the Works in wing, The Compary shall not be inable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
 (a) where the Company has performed temporary repairs that:

 (a) where the Company has performed temporary repairs that:
 (b) the Company offers no guarante agains the reoccurrence of the initial fault, or any further damage caused, and
 (c) the Company villars no guarante agains the reoccurrence of the initial fault, or any further damage caused, and
 (b) the Company villar no guarante agains the reoccurrence of the fault and shall provide the Customer with an estimate for the full repair required; and
 (b) the Company villar any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure; and
 (c) the Company sillar of the responsible or liable for any defect in other appliances or power points as a coincidence of the Company instilling the Materials, and any defects in the Materials or appearing in the Works after completion due to the Customer or any times that overloads the structure or system to which the Company Materials are nistalled or connected to, or by workmanship not performed by the Company, shall not be customer's responsibility to insure any equipment partly or completely installed on the Works against the full admage; and
 (f) the Customer's responsibility to insure any equipment partly or completely work marks abyoind reasonable cort of the damage; and
 (f) the Customer's responsibility to insure any equipment partly or completely work marks abyoind reasonable cort of the Campany (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which the Company may have to break into or disturb in performance of the Works are abyoind reasonable cort of the Company (including, without limitat

- the Company shall suspend the Works; and
 the Customer shall be fully responsible for the resolution of any resulting problems; and
- (iii) any additional cost incurred by the Company shall be added to the Price under clause 6.2; and (h) Materials supplied may
 - exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Company will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and expand, contract or distort as a result of exposure to heat, cold, weather;
- (ii)

and anaged to usual as a result of exposure to heat, cold, weather;
 mark or stain if exposed to certain substances; and
 be damaged or disfigured by impact or soratching.
 Where the Company requires that Materials, tools etc. required for the Works be stored at the Works, the Customer shall supply the Company a safe area for of damaged, that take all reasonable efforts to protect all times from destruction, theft or damaged, in the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.

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Underground Locations / Hidden Services Prior to the Company commencing any work the Customer must advise the Company of the precise location of all services on the Worksite and clearly mark the same. The mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer studge mains, water mains, irrigation pipes, teleptone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.

Worksite. Whilst the Company will take all care to avoid damage to any services the Customer agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

clause 6.2

request

- notified as per clause 10.1. Compliance with Laws The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works. Both parties acknowledge and agree: (a) to comply with the Building Act 2004 (including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works. (a) to comply with the Building Act 2004 (including any subsequent Amendments) in respect of all workmanship and building products to be supplied during the course of the Works; and (b) that Works will be providued in accordance with any current relevant Australian/New Zealand Standards applicable. Where the Customer has supplied products for the Company to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Company solito, it is believed that the Works, until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.

- such a change to the plans and design will be invoiced in accordance with clause 62. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works. All work will be tested to ensure that it is electrically safe and is in accordance with the wining rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wining standards. If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Company, then the Company shall notify the Customer immediately. The power if isolated will not be re-energised until such time as the existing conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Company, then the Company shall notify the Customer immediately. The power if isolated will not be re-energised until such time as the existing condition has been redified and made safe in accordance to the Electrical Safety Regulations. The Customer accepts and agrees that any costs associated with the redification Works including any Materials and labour shall be to the Customer's account. Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards and Work Place Regulations'. The Company's live Works procedures are designed to eliminate risk of injury to the Company's live Works such Works for which additional, charges may be applicable. This shall be invoiced in accordance with additional, charges may be applicable. This shall be invoiced in accordance with when additional charges may be applicable.

additional charges may be applicable. This shall be invoiced in accordance with

Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 Nonimisation gauge 11.1 and pursuant to the means a safety at work Ac2 state (the "HSW Ac4", the Company agrees at all times to comply with sections 28 and 34 of the "HSW Ac4" 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 where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.

Title The Company and the Customer agree that ownership of the Materials shall not pass

until: (a) the Customer has paid the Company all amounts owing to the Company; and (b) the Customer has met all of its other obligations to the Company. Receipt by the Company 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. It is further agreed that: (a) until ownership of the Materials passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Company on request

Falcon Electrical Limited – Terms & Conditions of Trade

- (b) the Customer holds the benefit of the Customer's insurance of the Materials on 16.4 trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 (c) the production of these terms and conditions by the Company shall be sufficient evidence of the Company's rights to receive the insurance proceeds direct from 16.5 the insure rwithout the need for any person dealing with the Company to make further environs.
- the insurer without the need for any person dealing with the Company to make further enquiries;
 (d) the Customer must not sell, dispose, or otherwise part with possession of the 16.6 Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand;
 (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product to the Company and sell, dispose of or trutt in the Raterials have become foctures the Customer irrevocably authorises are kept and recover possession of the Materials in transit whether or not the Company may macrower by Materials;
 (g) the Company may recover possession of any Materials in transit whether or not deliver the proceed so one for Materials in transit whether or not deliver the proceed so the Company and must pay one deciver the proceed so the Company and must pay one deciver the proceed so the Company and must pay one for the Materials in transit whether or not 18. The company may recover possession of any Materials in transit so the Materials nor mater the proceed so the Company and must pay one proceed so the Company and must pay one proceed so the Company and the source of the Materials in transit whether or not the deciver proceed so the company and must pay one pay and the company and must pay one pay and the pay one pay and the pay one pay and the company and must pay one pay and the company and must pay one pay and the company and must pay one pay and the pay one pay and the pay one

- the Company may recover possession of any Materials in transit whether of not delivery has occurred;
 the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Company; and
 the Company may commence proceedings to recover the Price of the Materials old notwithstanding that ownership of the Materials has not passed to the Content of the Company.
- 18.2 Customer

Personal Property Securities Act 1999 ("PPSA") Upon assenting to these terms and conditions in writing the Customer acknowledges

- 13.2
- Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) a security interest is taken in all Materials that have previously been supplied and 19.1 that will be supplied in the future by the Company to the Customer and the proceeds from such Materials. The Customer undertakes to: (a) sign any further documents and/or provide any further information (such 19.2 information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement of infancing change statement on the Personal Property Securities Register; (b) indemnity, and upon demand reimburse; the Commany for all expenses incurred in registering a financing statement or financing change statement on the 19.3 Personal Property Securities Register or releasing any Materials charged thereby;

 - Property Securities Register or releasing any Materials charged thereby;
 (c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of the Company, and
 (d) immediately advise the Company of any material change in its business practices of selling Materials which would result in a change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PSA shall apply to these terms and conditions.
 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PSA.
 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 Uncless 13.1 to 13.5.
 Subject to any express provisions to the contrary (including those contained in this siness 19.4
- 13.3 13.4
- 13.5
- 13.6
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- clauses 13.1 to 13.5. Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

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- contracting out of any of the provisions of the PPSA. 20.1 Security and Charge 20.1 In consideration of the Company agreeing to supply the Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer of its row or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms of the charge and security interest are the terms of the morandum 2018/3424 registered pursuant to s.209 of the Land Transfer Act 2017. The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company fights under this clause. The Customer irrevocably appoints the Company rand each director of the Company 20.3 as the Customer's true and lawful altomery's to perform all necessary acts to give effect to the provisions of this clause. 14 including, but not limited to, signing any document on the Customer's behalt. 20.4
- 14.2
- 14.3

- Defects and Returns The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, 21. Shortage in quantity, damage or failure to comply with the description or quote. The 21.1 Customer shall afford the Company an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials, which the Company has agreed in writing that the Customer is entitled to rejetacing the Materials or repairing the Materials. Returns will only be accepted provided that: (a) the Customer has complied with the provisions of clause 15.1; and (b) the Company has agreed in writing to accept the return of the Materials; and
- 15.2

 - the Company has agreed in writing to accept the return of the Materials; and the Materials are returned at the Customer's cost within fourteen (14) days of the 21.2 (c)
 - delivery date; and (d) the Company will not be liable for Materials which have not been installed, stored or used in a proper manner; and
- or used in a proper manner; and (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances. The Company may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of five percent (5%) of the value of the returned Materials huis any frient. 15.3
- any freight. ect to clause 15.1, non-stocklist items or Materials made to the Customer's ifications are under no circumstances acceptable for credit or return. 15.4

Warranties

- Warranties Subject to the conditions of warranty set out in clause 16.2 the Company warrants 21.3 that if any defect in any Materials manufactured or Works provided by the Company becomes apparent and is reported to the Company within three (3) months of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) replace or remedy the defect. The conditions applicable to the warranty given by clause 16.1 are: (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) failure on the part of the Customer to properly maintain any Materials or serviced item; or 16.1
- 16.2
- - (ii) failure on the part of the Customer to follow any instructions or guidelines

 - (ii) failure of the part of the Company; or provided by the Company; or
 (iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or
 (iv) the continued use of any Materials or serviced item after any defect becomes 21.4 apparent or would have become apparent to a reasonably prudent operator
- apparent or would have become apparent to a reaction of the second of the variant of the variant case and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered 21.6 or overhauled without the Company's consent.
 (c) in respect of all claims the Company 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.
 21.7
 21.6 For Materials not manufactured by the Company, the warranty shall be the current workmanship or in the sensible for any tensor of the Materials. The Company shall not be bound by nor be responsible for any tensor of the Materials.

- To the extent permitted by statute, no warranty is given by the Company as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. The Company shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising. The conditions applicable to the warranty given on Materials supplied by the Company are contained on the "Warranty Documentation" that will be supplied with the Materials.
- the Materials. In the case of second hand Materials, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

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

Intellectual Property

- Intellectual Property Where the Company has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Company. The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infinge any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company will respect of any such infingement.

- Default and Consequences of Default 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 Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration frees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees). bank dishonour fees)
- costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees). Further to any other rights or remedies the Company, may have under this Contract, if a Customer has made payment to the Company, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed 22.2 transaction, in addition to any further costs incurred by the Company, under this clause 19, 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. Without prejucioe to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled 23. the come immediately payable if: (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it fails due; (b) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer. 23.2 **Cancelation**

- Cancellation Without prejudice to any other rights or remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment **24**, and/or failure to remedy any breach in respect of this Contract within ten (10) working 24, days of receipt by the Customer of such notice(s) then the Company may suspend 24.1
- and/or indice to feature and the second of the second seco

Please note that a larger print version of these terms and conditions is available from the Company on request.

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Privacy Policy All emails, documents, images or other recorded information held or used by the Company is "**Personal Information**" as defined and referred to in clause 21.3 and therefore considered confidential. The Company acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy At 220 (1the Act) Including Part In ot the CECD Guidelines and as set out in the Act. The Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Company that may result in serious harm to the Customer's the Company will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act. Any release of such Personal Information must be in accordance with the Act. Any release of such Personal 25.2

Notwithstanding clause 21.1, privacy limitations will use an operation of law. Notwithstanding clause 21.1, privacy limitations will extend to the Company in respect of Cookies where the Customer utilises the Company's website to make 25.3

- Notwinstanding clause 21.1, privacy limitations will extend to the Company in crespect of Cookies where the Customer utilises the Company's website to make 25.4 enquiries. The Company agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technologies, such as pixels and other similar details;
 (a) IP address browser, email client type and other similar details;
 (b) tracking technologies, such and the client of the Customer's: 25.4 (a) IP address browser, email client type and other similar details;
 (c) reports are available to the Company when the Company sends an email to the Customer consents to the Company's use of Cookies on the Company's website and later wishes to withdraw that consent, the Customer may mange and 25.6 control the Company's controls via the Customer, web browser, including 25.7 removing Cookies by deleting them from the browser history when exiting the site. The Customer and the customer's license the details, electronic contact (email, Facebook or Twitter details), medical insurance 25.6 details or next of kin and other contact information (where applicable), previous credit applications, credit history or any voredue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditivorthiness; or
 (i) (in the purpose of marketing products and services to the Customer.
- Where the Customer shall have the right to request (by e-mail) from the Customer shall have the right to request that the Customer shall have the right to request (by e-mail) from the Customer shall have the right to request (by e-mail) from the Customer series (b) and the Customer to the Customer shall have the right to request (b) the Customer shall have the right to request (b) the Customer shall have the right to request (b) the Customer shall have the right to request (b) the Customer shall have the right to request (b) the Customer shall have the right to request (b) the Customer shall have the right to request (b) the Customer shall have the right to request (b) the Customer shall have the required unders the right to request that the Company volution.

- The Customer can make a privacy complaint by contacting the Company via e-mail. The Company will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with

Page 2 of 2

the resolution provided, the Customer can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz_

- uspension of Works here the Contract is subject to section 24A of the Construction Contracts Act 2002,
- Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
 (a) the Company has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 (i) the payment is not paid in full by the due date for payment in accordance with clause 6.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer, or
 (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment can be payment and payment schedule issued by the customer in relation to the payment can be payment and payment and payment schedule issued by the Customer in (iii) the Customer in the payment can be payment and payment and payment schedule issued by the Customer in relation to the payment and payment action and payment schedule issued by the for its payment; or

 - in relation to the payment claim is not paid in full by the due date for its payment; or (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Company by a particular date; and (iv) the Company has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if the Company suspends work, it:
 - (ii) is not in breach of Contract; and
 (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and 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 Company exercises the right to suspend work, the exercise of that right the complexity of the right to suspend work.
- If the Company exercises the right to suspend work, the Exercise of and right does not: (0) affect any rights that would otherwise have been available to the Company under the Contract and Commercial Law Act 2017; or (0) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Company suspending work under this provision;) due to any act or omission by the Customer, the Customer effectively precludes the Company's obligations under this Contract, then without prejudice to the Company's obligations under this Contract, then without prejudice to the Company's obligation on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incured by the Customer as if such suspension and recommencement shall be payable by the Customer as if they were a variation
- If pursuant to an right conferred by this Contract, the Company suspends the Works and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, the Company shall be entitled to terminate the Contract, in accordance with clause 20.

Service of Notices

Trusts

General

- Any written notice given under this Contract shall be deemed to have been given and
- (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;
 (e) if sent by facsimile transmission to the fax number of the other party as stated in this Contract;
 (e) if sent by pravil to the other party is as to the dadress.

Trusts
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 Company may have notice of the Trust, the Customer covenants with the Company 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 Company (the Company will not unreasonably withhold consent), cause, permit, or suffer to happen any

will not intreasonably will fold consently, cause, permit, or some to happen any
of the following events:
 (i) the removal, replacement or retirement of the Customer 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.

General Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s). The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, and that arbitration Act and that provision of these terms and conditions shall not be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the treation provision.

enforceability of the remaining provisions shall not be affected, prejudiced o

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 Napier courts, New Zealand.

We Załand. New Załand: Subject to the CGA, the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works). The Company may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent. The Company may lecence and/or assign all thout the written approval of the Company. The Company may lecence and understands that they have no authority to give any instruction to any of the Company's sub-contractors without the authority of the Company.

instruction to any or the Company's construction to any or the Company. The Customer agrees that the Company 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 Company to provide Works to the