

TERMS AND CONDITIONS OF TRADE

1. GENERAL

- 1.1 All Products supplied by the Supplier to the Customer are sold subject to these Terms.
- 1.2 The Customer acknowledges that by purchasing any Products from the Supplier, the Customer has read, understood and accepted these Terms and agrees to be bound by these Terms.
- 1.3 The Customer, acknowledges and agrees that the Customer had the opportunity to obtain professional advice regarding the effect of these Terms and negotiate these Terms with the Supplier.

2. ORDERS

- 2.1 The Customer may order Products from the Supplier by any manner that the Supplier accepts.
- 2.2 Orders for Products are subject to the Supplier's approval and acceptance in writing. All orders are subject to availability of the Products.
- 2.3 All Special Indent Orders shall require a deposit for an amount equivalent to 30% of the Price for the Products. The deposit shall be due and payable on acceptance of the order by the Supplier pursuant to clause 2.2 above. The Supplier reserves the right to require, at its discretion, a deposit on any orders for Products (even if the order is not a Special Indent Order).
- 2.4 The Customer cannot cancel any order for Products (whether fully or in part) unless the Supplier has agreed to the cancellation in writing. Such agreement shall not be unreasonably, withheld, delayed or conditioned. For the avoidance of doubt, the Supplier shall not be required to accept a cancellation where:
- (a) Such a request was received after the Supplier ordered the Product from any third-party;
 - (b) The Products are a Special Indent Order which has been placed by the Supplier; or
 - (c) Agreeing to such a request will result in the Supplier incurring a fee or cost, unless the Customer agrees to indemnify the Supplier in respect of that fee or cost
- 2.5 The Supplier is entitled to, in respect of its Product line offerings:
- (a) Discontinue the supply of any of the Products;
 - (b) Add to or substitute Products; and
 - (c) Make such alterations as the Supplier thinks fit to the specifications, manufacture, design or packaging of the Products.
- 2.6 The Supplier will give the Customer notice of such change under clause 2.5 by email. For the avoidance of doubt clause 2.5 does not apply in relation to orders of Products that have been placed and accepted.

3. PRICE

- 3.1 The price payable for the Products ordered shall be either:
- (a) Where the Supplier has provided the Customer with access to the Supplier's price list, the price specified in the Supplier's price list at the time the order is placed; or
 - (b) In all other cases, the price specified in the Supplier's quotation, ("Price").
- 3.2 Where a quotation is given by the Supplier to the Customer:

- (a) Subject to clause 3.3 of these Terms, the quotation will be valid for 30 days from the date of issue and thereafter will be deemed to be withdrawn; and
- (b) No change to the quotation is permitted unless the Supplier has agreed in writing to the change.

3.3 The Supplier reserves the right to withdraw or vary any quotation at any time before the Customer accepts the quotation.

3.4 The Supplier reserves the right to change the prices of Products listed in its price list. In such circumstances, the Supplier will email notice of such change to the Customer. Price changes apply prospectively only and do not affect orders already accepted.

3.5 The Supplier may correct any clerical errors or omissions in any quotation, correspondence or invoice.

3.6 In addition to the Price (unless the price is expressed to be GST inclusive), the Customer will pay the Supplier an amount equal to the GST payable by the Supplier in respect of the Products that are the subject of a GST invoice.

3.7 All amounts due under these Terms shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4. PAYMENT TERMS

Unless otherwise agreed by the Supplier in writing and subject to the Customer having completed a credit application, the Customer will pay for the Products as follows:

- (a) For Special Indent Orders (and other orders where the Supplier requires a deposit pursuant to clause 2.3), 30% of the total Price for the Products shall be paid on placing the order with the Supplier. The balance shall be payable on the 20th day of the calendar month following receipt of an invoice from the Supplier; and
- (b) In respect of all other orders, the Customer shall pay the full Price for the Products on the 20th day of the calendar month following receipt of an invoice from the Supplier.

4.2 The Supplier reserves the right at any time to require payment in full for the Products prior to Delivery or the right to withdraw credit where it has reasonable credit or risk grounds for doing so. If a Customer has not provided a credit application or been approved for credit, the Supplier shall require payment in full for the Products prior to Delivery.

4.3 Where any amount under an invoice from the Supplier is overdue for payment by the Customer, interest shall be payable at 15% per annum calculated on a daily basis and compounding monthly, on the overdue amounts computed from the date on which payment should have been made until the date of actual payment.

4.4 If the Customer fails to pay the Price payable for the Products when due, the Supplier shall be entitled to:

- (a) Suspend supply of the Products;
- (b) Require payment in full for Products prior to Delivery; and/or
- (c) Suspend or terminate any trade account the Customer holds with the Supplier, at which time all amounts the Customer owes to the Supplier will become due and payable.

In addition to the rights at clause 4.4, the Supplier shall also be entitled to recover all reasonable costs associated with the

recovery of the outstanding amounts. These costs may include, but are not limited to:

- (a) Any legal expenses incurred by the Supplier in pursuing the recovery of the debt, including lawyer's fees, court costs, and any other related legal expenses;
- (b) Fees charged by any third-party collection agencies engaged by the Supplier to recover the outstanding amounts;
- (c) Internal administrative costs incurred by the Supplier in managing the recovery process, including staff time and resources;
- (d) Any interest charges applied to the overdue amounts as specified in clause 4.3; and
- (e) Any other reasonable expenses incurred by the Supplier in the process of recovering outstanding amounts, including travel expenses, communication costs and any other incidental costs.

The Customer agrees that these costs shall be added to the total amount owing and shall be payable by the Customer upon demand by the Supplier.

4.6 If an invoicing error is identified after payment of the invoice, any adjustments in favour of the Customer will be addressed through a credit to the Customer.

4.7 The Customer may dispute an invoice (or part of) within five Business Days of receiving it but may not withhold payment for any portion of the invoice that is undisputed.

4.8 Any disputes in relation to an invoice will be resolved in accordance with clause 15.

5. DELIVERY AND RISK

5.1 Delivery of the Products shall be deemed to be complete upon:

- (a) the Customer (or their agent or contractor) collecting the Products from the Supplier's premises;
- (b) If the Supplier has agreed in writing to arrange the delivery of the Products to the Customer, at the time of delivery to the agreed address.

5.2 Risk in the Products will pass to the Customer on collection of the Products or on delivery of the Products pursuant to clause 5.1 (including any moving, loading or unloading of the Products by the Customer or its agents or representatives during collection or delivery). The Customer will be responsible for all freight and transport costs. The Customer shall be responsible for arranging insurance for the Products on collection, or if the Supplier has agreed to arrange delivery pursuant to clause 5.1(b), on delivery.

6. INSPECTION AND RETURNS

6.1 The Customer will inspect the Products as soon as practicable following Delivery of the Products and any event within three (3) Business Days following Delivery. The Customer must immediately notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the quotation or description discovered during inspection.

6.2 If the Customer does not notify the Supplier in writing within three (3) Business Days of Delivery of the Products, then the Customer is deemed to have accepted the Products in good order and condition.

6.3 Where the Supplier has agreed in writing that the Customer is entitled to reject the Products, the Supplier will, at the Supplier's election, repair the Products, replace the Products with Products of a substantially similar type, or refund the price the Customer has paid for the Products either, at the Supplier's election, in the form of account credit or in cash.

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The Supplier's liability under this clause 6 is limited to either, at the Supplier's election, the repair of the Products, the replacement of the Products or refund of the Price the Customer has paid for the Products either, at the Supplier's election, in the form of account credit or in cash.

Returns of Products will only be accepted by the Supplier if:

- (a) The Customer has complied with the provisions of clause 6.1 and the Supplier has agreed in writing to the return of the Products;
- (b) Unless otherwise agreed by the Supplier, the Products are returned at the Customer's cost within 10 Business Days of the Supplier confirming its acceptance to the return of the Products;
- (c) The Products are returned with the original invoice/packing slip or the number and date of the invoice or packing slip are enclosed; and
- (d) The Products are returned in the condition in which they were delivered and in original packaging, complete with any accessories, parts and instruction manuals.

Except where clause 6.3 applies, the Supplier will not accept returns of Products where the Supplier has arranged for the Products to be manufactured, supplied, or cut to size to the Customer's specifications, or where the Supplier does not readily keep the Products in stock.

The Supplier may at its discretion charge a handling or restocking fee.

OWNERSHIP AND SECURITY

The title for the Products will remain with the Supplier and will only pass to the Customer once the Supplier has received payment in full of the Price for the Products.

The Customer agrees that the Supplier may register a security interest in the Products provided on the PPSR in accordance with clause 8 below.

If the Customer sells the Products before title passes, the Customer must hold the proceeds of sale on trust for the Supplier in a separate, identifiable account without commingling, in addition to the Supplier's rights in "proceeds" under the PPSA.

PERSONAL PROPERTY SECURITIES ACT 1999

The Customer agrees that these Terms constitute a security agreement for the purposes of the PPSA. The Customer grants to the Supplier a purchase money security interest in the Products and their proceeds as security for any amounts due and owing by the Customer to the Supplier and for all the Customer's obligations to the Supplier. The Products subject to the security interest will be the Products described in any:

- (a) Quotation given by the Supplier to the Customer;
- (b) Contract between the Supplier and the Customer;
- (c) Purchase order or any other order for the Products from the Customer; or
- (d) Dispatch order, invoice, statement or remittance advice given by the Supplier to the Customer.

The Customer undertakes to:

- (a) Sign any further documents and provide any further information which the Supplier may reasonably require to register the financing statement or financing charge statement on the PPSR;
- (b) Do anything else the Supplier requires to ensure that the Supplier has a perfected security interest in the Products and a purchase money security interest in the Products to the extent of the Price;

- (c) Indemnify and upon demand, reimburse the Supplier for all expenses incurred in registering a financing statement or financing charge statement on the PPSR or releasing any Products charged; and
 - (d) Not register a financing change statement or a change demand without prior written consent from the Supplier.
- 8.3 The Customer will not, without the Supplier's prior written consent, allow any person (including the Customer) to register a financing statement over any the Products.
- 8.4 If the Customer sells the Products prior to payment to the Supplier, the Customer undertakes to pay the proceeds derived from the sale into a separate bank account for the benefit and as trustee for the Supplier so that those proceeds remain identifiable in connection with that sale of the Supplier.
- 8.5 The Customer waives its right to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by the Supplier. Sections 114(1)(a), 133 and 134 of the PPSA will not apply and the Customer waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 8.6 Any breach by the Customer of these Terms will constitute a default for the purposes of the PPSA. Without prejudice to the Supplier's other rights and remedies, the Customer irrevocably grants to the Supplier the right and licence to enter the Customer's premises, without notice and without any liability whatsoever to the Customer or any person or company claiming through the Customer, in order to repossess the Products.
- 9. SUPPLIER'S RESPONSIBILITIES**
- 9.1 The Supplier will use reasonable endeavours to meet the delivery times for the Products specified in a quotation or as agreed between the parties in writing, but such delivery times are estimates only and time for performance by the Supplier shall not be of the essence. To the fullest extent permitted by law, the Supplier will not be liable for any delay in delivery, or for any loss (including consequential or indirect loss) arising from any delay, however caused, including but not limited to shipping delays, customs delays, Force Majeure Events or delays by third party carriers, manufacturers or suppliers. The Customer acknowledges and agrees that it is responsible for placing orders with due consideration of stated lead times and any potential unforeseen delays, and to the fullest extent permitted by law, no delay in delivery shall entitle the Customer to cancel any order, reject the Products, or withhold, set off or defer payment of any amount due to the Supplier. If the Supplier becomes aware of a material delay, it will notify the Customer as soon as reasonably practicable.
- 9.2 The Supplier will ensure that the Products supplied:
 - (a) Conform as to description of the particulars stated in the applicable quotation or order; and
 - (b) Are supplied with free and clear title and are not subject to any security interest, lien or other encumbrance (other than may be registered by the Supplier under clause 8).
- 9.3 Where the Products have the benefit of a warranty from a third-party manufacturer, the Supplier will, to the extent permitted by that third-party manufacturer, pass the benefit of the warranty to the Customer, but to the fullest extent permitted by law, the Supplier will not itself be liable under such warranty. If the Supplier is able to make a successful claim under a warranty given by that third-party manufacturer, it will pass the benefit of that claim to the Customer.

To the fullest extent permitted by law, and other than as specified in this clause 9, the Supplier gives no warranty of any kind in respect of the Products.

The Customers and Supplier agree that where the Customer is acquiring the Products in trade (as that term is defined in the Consumer Guarantees Act 1993), the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 and the provisions of the Consumer Guarantees Act 1993 will not apply.

Except to the extent permitted by law, nothing in these Terms is intended to have the effect of contracting out of provisions of the Consumer Guarantees Act 1993 in respect of a Customer that is a consumer (as that term is defined in the Consumer Guarantees Act 1993). Where a Customer is not in trade, these Terms are amended to the extent necessary to give effect to that intention.

CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) Co-operate with the Supplier in all matters relating to the provision of the Products;
- (b) Not incur any liability on behalf of the Supplier or in any way pledge or purport to pledge the Supplier's credit or purport to make any contract binding upon the Supplier; and
- (c) Act in good faith at all times to the Supplier.

The Customer shall indemnify the Supplier in respect of a breach by the Customer of these Terms.

If the Supplier follows the design instructions or specifications provided by the Customer, the Customer agrees to indemnify the Supplier against all damages, penalties, costs, and expenses incurred due to any infringement of patents, trademarks, designs, copyrights, or common law rights resulting from such work. The Customer warrants that any design, instructions, or specifications provided will not cause the Supplier to infringe on any patents, trademarks, designs, copyrights, or common law rights during execution.

The Customer warrants that it has the full authority to order the Products, and the Customer shall be bound by all such orders.

To the extent permitted by law where the Customer purchases Products for a particular purpose, it is the Customer's sole responsibility to ensure that the Products will be suitable for the Customer's purpose, and the Supplier shall have no liability whatsoever in the event that the Products are not fit for the Customer's purpose, notwithstanding any statements made to the Customer by the Supplier or its officers or employees.

LIMITATION OF LIABILITY

To the fullest extent permitted by law, the Supplier will not be liable for any:

- (a) Loss of income or profits, loss of sales or business, loss of agreement or contracts, loss of anticipated savings, loss or damage to goodwill, special damage or injury of any kind, or any consequential or indirect loss or damage suffered by the Customer or any other person;
- (b) Damage to the Products or any other property, including damage occasioned by accident, abuse, misuse, failure to perform preventative maintenance, usage not in accordance with instructions for the Products in any user or manufacturer guide, manual or other directions;

- (c) Faults, defects, or damage to the Products, or any other property, caused by the installation, cleaning, maintaining, repairing, modifying or adding to the Products by the Customer or any person other than the Supplier without the prior written consent of the Supplier.
 - (d) Any damage sustained by the Customer or any other person arising from reliance on any verbal statement or advice provided by the Supplier regarding system design, performance, ability, suitability, or quality of the Products. This exclusion applies regardless of whether such verbal statements or advice were incorrect, negligently given, or whether any resulting loss was foreseeable by the Supplier.
- 11.2 To the fullest extent permitted by law, the Supplier's total liability to the Customer arising under or in connection with these Terms or any order, shall not in aggregate exceed an amount equivalent to the Price for the Products giving rise to the claim. In this clause, reference to the Supplier's total liability includes liability in contract, tort (including negligence), under an indemnity or otherwise arising from the relationship between the parties.
- 11.3 To the fullest extent permitted by law, unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail to enable the Supplier to investigate and consider the claim.
- 12. TERMINATION**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate an order for the supply of Products with immediate effect by giving written notice to the other party if the other party:
 - (a) Commits a material breach of any term of these Terms and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
 - (b) Is placed into liquidation;
 - (c) Has a receiver or statutory manager appointed in respect of the whole or any part of its assets;
 - (d) Makes an assignment for the benefit of or composition with its creditors generally;
 - (e) Becomes unable to pay its debts as they fall due or is deemed or is unable to pay such debts as that term is defined in section 287 of the Companies Act 1993; or
 - (f) Suspends payment to its creditors or ceases or threatens to cease to carry on its business or convenes a meeting of its creditors to propose a scheme of arrangement with its creditors.
- 12.2 Without affecting any other right or remedy available to it, the Supplier may terminate an order for the supply of Products with immediate effect by giving written notice to the Customer if:
 - (a) the Customer fails to pay any amount due to the Supplier on the due date for payment and remains in default for more than 10 Business Days after being notified in writing to make such payment; or
 - (b) there is a change of Control of the Customer.

13. CONSEQUENCES OF TERMINATION

On termination the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest (if applicable) and, in respect of the Products supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt.

The termination or expiry of these Terms shall not affect any provisions of these Terms that are intended to survive termination.

Termination or expiry of these Terms shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination or expiry.

14. FORCE MAJEURE

Non-performance by either party of any of its obligations under these Terms, excluding the obligation to pay money, will be excused, without liability for non-performance, during the time and to the extent that the performance is prevented, wholly or substantially by a Force Majeure Event, provided that the affected party:

- (a) Gives the other party written notice within one Business Day after becoming aware of or likelihood of the Force Majeure Event, and providing details of the nature, expected duration and effect of the Force Majeure Event;
- (b) Keeps the other party informed of any changes to the Force Majeure Event, including its cessation; and
- (c) At its own cost, uses reasonable endeavours to mitigate the effects of the Force Majeure Event and, where reasonably practicable, continue to perform its obligations under these Terms.

Performance of any obligation affected by the Force Majeure Event will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

15. DISPUTE RESOLUTION

To the extent permitted by law, no party to these Terms shall commence any court proceedings relating to any dispute arising out of these Terms (including any dispute as to the validity, breach or termination of these Terms or as to any claim in tort, in equity or pursuant to any statute) unless that party has complied with the following paragraphs of this clause 15.

Any party who claims that a dispute has arisen under or in relation to these Terms must give written notice to every other party specifying the nature of the dispute.

On receipt of such notice by the other party, the parties:

- (a) Must co-operate and use their reasonable endeavours to resolve the dispute; and
- (b) Must, if they do not within 10 Business Days of receipt of the notice (or such further period as they may agree in writing) resolve the dispute, refer the dispute to mediation.

The mediation shall be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties, the mediator shall be selected, and the mediator's fee shall be determined, by the President of the New Zealand Law Society. The fee and costs of the mediator appointed shall be shared equally between the parties.

15.5	A party who seeks urgent interlocutory relief may, by written notice to each other party to the dispute, elect not to comply with the provisions of clauses 15.1 and 15.4, but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent, on the disposal of the application the provisions of clauses 15.1 and 15.4 inclusive shall once again take effect.		
16.	INTELLECTUAL PROPERTY RIGHTS		
16.1	Any sale of Products pursuant to these Terms will not operate so as to transfer or vest in the Customer any Intellectual Property in the Products. All Intellectual Property rights in respect of the Products remain the Supplier's or the applicable manufacturer's property and the Customer may not use, reverse engineer, interfere with or alter the Intellectual Property in any way.		
17.	PRIVACY		
17.1	Each party agrees to comply with its obligations under the Privacy Act 2020, and any other applicable privacy or data protection laws in relation to any personal information collected, used, stored or disclosed under these Terms.		
17.2	Where the Customer discloses to the Supplier personal information about any individual, the Customer must ensure that the individual is aware that the Supplier is collecting their personal information, as required by the Privacy Act 2020 (including ensuring the individual is aware of all the matters contained in IPP 3A). The Customer indemnifies the Supplier against any loss or liability arising from a breach of this clause.		
17.3	If the Customer or the Guarantor are natural persons, the Customer or the Guarantor (as applicable) (each an "Individual") irrevocably authorise:		
	(a) The Supplier to collect personal information about the Individual from the Individual directly or from third parties as set out in these Terms, which such personal information may include contact information (including name, occupation, address, phone number and email address), financial information (including payment information, bank or credit card details and credit history), transaction information (including product and purchase orders), account details and any communications with you;		
	(b) The Supplier to collect, retain and use such information about that Individual as the Supplier may necessarily require for the purposes of:		
	(i) Carrying out credit checks, (including any overdue fines balance information held by the Ministry of Justice) assessing the Customer's credit worthiness or responding to any credit enquiry about the Customer;		(vii) Carrying out any activity in connection with any legal, governmental or regulatory requirements that the Supplier is subject to or in connection with legal proceedings, crime or fraud prevention, detection or prosecution; and
	(ii) Processing, creating and otherwise administering an account;		(viii) Any other purpose as consented to by that Individual in writing from time to time, (collectively referred to as the "Purposes").
	(iii) Supplying the Products to the Customer;	(c)	Any person or entity to provide the Supplier such information as the Supplier may necessarily require about that Individual for the Purposes;
	(iv) Dealing with requests, enquiries or complaints and other customer care related activities and all other general administrative and business purposes;	(d)	The Supplier to collect and disclose information about that Individual as necessarily required for the Purposes, or as otherwise authorised by that Individual, including to:
	(v) Marketing any products or services to the Customer and carrying out market and product analysis and research;	(i)	Third parties who provide products or services related to the Products that the Supplier provides;
	(vi) Enforcing the Supplier's rights under these Terms;	(ii)	Credit reference agencies;
		(iii)	Third parties to whom the Supplier may be required to disclose information by reason of legal, governmental or regulatory authority or where the Supplier believes in good faith that disclosure is necessary to protect or enforce the Supplier's rights or the rights, property or safety of others;
		(iv)	Any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer;
		(v)	Trusted third parties to provide services or perform functions on the Supplier's behalf; and
		(vi)	To any other third party where that Individual has given its express consent for the Supplier to do so.
17.4	In addition to clause 17.3, the Supplier shall be entitled to collect, use and disclose information about an Individual in accordance with any applicable New Zealand privacy legislation.		
17.5	An Individual is entitled to request access to and correction of any such information held about them by the Supplier.		
17.6	The Supplier will maintain reasonable security safeguards to protect an Individual's information and take reasonable steps to ensure that Individual's information is not disclosed to an unauthorised person or entity.		
17.7	The Supplier will retain an Individual's information for so long as is reasonably necessary to fulfil the Purposes for which it was collected, including for the purposes of satisfying any legal, regulatory, tax or accounting requirements.		
17.8	If an Individual fails to provide any information that is reasonably requested by the Supplier, that Individual acknowledges that the Supplier may not be able to set up an account for the Customer, or otherwise provide the Products to the Customer.		
17.9	Any information about an Individual that is collected by the Supplier will be held by the Supplier. The Supplier's address is Unit 1A, 14 Link Drive, Wairau Valley, Auckland.		
18.	CONFIDENTIALITY		
18.1	All reports, correspondence, drawings, price lists, plans, computations, and specifications created by the Supplier in		

	relation to these Terms or for the provision of the Products shall remain the property of the Supplier. These materials are confidential between the Supplier and the Customer and must not be disclosed, copied, or used without the Supplier's prior written consent. Upon the Supplier's request, these materials shall be returned to the Supplier. All right and title to any discovery made by the Supplier while providing Products to the Customer shall also remain the property of the Supplier.	21.2	The Supplier reserves the right to amend these Terms in any manner and at any time. The Supplier will notify the Customer of any amendments to these Terms in writing. By continuing to order Products from the Supplier, after any such amendment, the Customer is deemed to have agreed to the amended Terms. Any existing accepted order continues on the Terms in force at acceptance unless the parties agree otherwise.
18.2	Each party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by clause 18.3	21.3	In the event that any provision of these Terms is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, said provision is to be read down, if possible, so as to be valid and enforceable, and as otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms or affecting the validity or enforceability of that provision.
18.3	Each party may disclose the other party's Confidential Information: (a) To its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Terms. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with clause 18.2; (b) As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or (c) If the Confidential Information is already or becomes public knowledge, otherwise than as a result of a breach by the disclosing party of any provision of these Terms.	21.4	All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under these Terms shall restrict or prejudice the exercise of any other right granted or otherwise available to it.
		21.5	The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of these Terms shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Terms.
		21.6	These Terms shall be governed by and interpreted in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.
18.4	No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms.	21.7	Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
19.	NOTICES		
19.1	Each notice or other communication under these Terms is to be made in writing and delivered by personal delivery or by email. A communication will be deemed to be received: (a) in the case of personal delivery, when delivered; and (b) in the case of emails upon delivery to the recipient's last known email address provided that no notification of failed delivery has been received by the sender, provided that any notice given after 5:00pm or on a day which is not a Business Day shall be deemed to be given at 9:00am on the next Business Day.	22.	PERSONAL GUARANTEE OF COMPANY DIRECTOR OR TRUSTEES
		22.1	If the Customer is a company or trust, then in consideration of the Supplier agreeing to supply the Products, provide Services, and (if applicable) grant credit to the Customer, the director(s) or trustee(s) of the company or trust (each a " Guarantor ") shall be deemed on placement of an order by the company or trust to be bound by these Terms in their personal capacity and jointly and severally personally undertake as principal debtors to the Supplier the payment of any and all money now or in the future owed by the Customer to the Supplier and indemnify the Supplier against non-payment by the Customer.
20.	ASSIGNMENT	22.2	Any personal liability of a Guarantor shall not exclude the Customer in any way from the liabilities and obligations contained in these Terms. Where there is more than one Guarantor, then the Guarantor's liability is joint and several.
20.1	The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under an order for Products or these Terms, without the prior written consent of the Supplier.	22.3	The Guarantor's obligation in clause 22.1 shall continue and remain for so long as the Customer has any obligations or liability under these Terms.
20.2	The Supplier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under an order for Products or these Terms, provided that the Supplier gives prior written notice of such dealing to the Customer.		
21.	MISCELLANEOUS	23.	INTERPRETATION
21.1	These Terms and any accepted order for the supply of Products constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.	23.1	The following definitions and rules of interpretation apply under these Terms: Business Day: a day, other than a Saturday, Sunday or public holiday in Auckland. Confidential Information: means any information, which by its nature is confidential, concerning the business, affairs, pricing, customers, or suppliers of the other party or of any

member of the group of companies to which the other party belongs.

Control: shall be as defined in section YC1 of the Income Tax Act 2007, and the expression change of control shall be construed accordingly.

Customer: means a person, company, trust or other entity that purchases Products from the Supplier.

Delivery: has the meaning given to that term in clause 5.

Force Majeure Event: means any unforeseen circumstances being any failure, delay or breach caused by strike, industrial dispute or disturbances, natural disaster, legislative, governmental or other prohibition or restrictions, fire, flood, disease, pandemic, hostilities, commotions or any other causes whatsoever, whether similar to the foregoing or not and which are beyond the party's reasonable control, but excluding the obligation to pay money due under these Terms.

GST: means Goods and Services Tax as defined in the GST Act.

GST Act: means the Goods and Services Tax Act 1985.

Guarantor: has the meaning given to that term in clause 22.1

Individual has the meaning given to that term in clause 17.3.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, all drawings, designs and specifications, rights to use, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

23.2

PPSA: means the New Zealand Personal Property Securities Act 1999 and **PPSR:** means the New Zealand Personal Property Securities Register.

Price: has the meaning given to that term in clause 3.1.

Products: means all products including (without limitation) all building materials, enclosure systems and façade, cladding and roofing products that are supplied by the Supplier.

Special Indent Order: means an order for Products that the Supplier does not keep readily available in stock and where the Supplier has specifically ordered the Products on the Customer's instruction.

Supplier: means The Building Agency Limited and its employees, contractors and agents.

Terms: means these terms and conditions of trade.

The following rules of interpretation will apply:

- (a) **currency:** all expressions of currency contained in these Terms shall be in New Zealand dollars unless stated otherwise.
- (b) **headings:** clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of these Terms.
- (c) **legislation:** a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- (d) **plurals:** a reference to the singular includes the plural and vice versa.