

Garador Auckland – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Seller" means Skyvic Garage Doors Limited T/A Garador Auckland in its capacity as assignee or on behalf of and with the authority of Skyvic Garage Doors Limited T/A Garador Auckland.</p> <p>1.2 "Client" means the persons/buying the Goods as specified in any invoice, document or order, and there is more than one Client is a 6.5 reference to each Client jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so 6.6 permits the terms "Goods" or "Services" shall be interchangeable for each other).</p> <p>1.4 "Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the consent 7.1 of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.</p> <p>2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act and any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>2.4 Any remote control keys the Seller is to supply with the Goods will only be released to the Client once full payment is received.</p> <p>2.5 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, 7.4 dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with the actual Goods the Seller is to supply. The Seller will not accept liability to the Client for quality of Goods which comply with accepted industry standards.</p> <p>2.6 Any advice, recommendation, information, assistance or service 7.5 provided by the Seller in relation to Goods or Services supplied is given in good faith, based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Client to confirm the 7.6 accuracy and reliability of the same in light of the use to which the Client makes or intends to make the Goods or Services.</p> <p>2.7 Notwithstanding the above clause, if the Seller offers advice or recommendation in regards to the choice of Goods and/or course of 8. Services to be provided and the Client dismisses this or decides to 8.1 order alternate Goods or different course of action, the Seller accepts no liability if the Goods/Services do not meet the Client's original plans or specifications.</p> <p>2.8 The Client acknowledges and agrees that at the time of quotation the Seller and the Client will agree which party will take responsibility to provide scaffolding for the installation of the Goods. Services to be undertaken (where in the Seller's opinion it is deemed necessary). It is also agreed that all scaffolding erected will 8.2 comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper construction and where necessary shall hold a current certificate of competency and will be fully licenced. In the event the Client is responsible and fails to provide the scaffolding and the responsibility then falls onto the Seller, the costs associated will be added as an extra in accordance with clause 5.2.</p> <p>3. Change in Control</p> <p>3.1 The Client shall give the Seller not less than fourteen (14) days prior 9. written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to changes in telephone numbers, contact details, email address, fax numbers, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.</p> <p>4.1 The Client acknowledges and agrees that:</p> <p>(a) the Seller does not guarantee the websites performance or 10.1 availability of any of its Goods; and</p> <p>(b) on-line ordering may be unavailable from time to time for technical reasons or due to maintenance or upgrades; and</p> <p>(c) there are inherent hazards in electronic distribution and as such the Seller cannot warrant against delays or errors in transmitting data between the Client and the Seller including orders, and you are advised to contact the Seller to confirm by law, the Seller will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.</p> <p>4.2 The Seller reserves the right to terminate your order if it learns that you have provided false information, intentionally or otherwise, with other users or the administration of the Seller's services, or violated these terms and conditions.</p> <p>5. Price and Payment</p> <p>5.1 At the Seller's discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Seller to the Client; or</p> <p>(b) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 The Seller reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested (including any applicable designs, plans and/or specifications) that must be made to the Goods to enable the placement of the Goods. Any variation once the order for the Goods has been processed shall not be accepted; or</p> <p>(b) where the quotation allows for one initial visit to the worksite for installation of the Goods and it becomes inevitable that extra visits will be required to complete the installation of the Goods, such visits unless otherwise agreed shall be invoiced in accordance with this clause 5.2; or</p> <p>(c) where additional Services are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather, access to the site, access to the site, availability of machinery, safety considerations, pre-existing structural integrity of the supporting framework to the installation site, prerequisite work by any third party not being completed or code compliance, difficulties or matching colour, lead times for specifically coloured hardware, etc.) which are only discovered on commencement of the Services; or</p> <p>(d) in the event of increases to the Seller in the cost of labour or Goods (including but not limited to overseas transactions that may increase the Seller's costs) as a result of fluctuations in currency rates of exchange and/or international freight and insurance charges which are beyond the Seller's control.</p> <p>5.3 At the Seller's sole discretion, a non-refundable deposit may be required.</p> <p>5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date(s) determined by the Seller, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) by way of instalments/progress payments in accordance with the Seller's payment schedule;</p> <p>(c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for receipt of invoices; and</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) 11. days following the date of any invoice given to the Client by the Seller.</p> <p>5.5 Payment may be made by cash, cheque, bank cheque, electronic-line banking, eftpos, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Seller and the Client.</p> <p>5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction, on any invoice issued to the Client at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Client at the Seller's nominated carrier takes possession of the Goods at the Seller's address; or</p> <p>(b) the Seller's nominated carrier delivers the Goods to the Client's nominated address even if the Client is not present at the address.</p> <p>6.2 At the Seller's sole discretion, the cost of delivery is in addition to the Price.</p> <p>6.3 In accordance with clause 6.4 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.</p> <p>6.4 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the</p>	<p>Client written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by:</p> <p>(a) make a selection; or</p> <p>(b) have the site ready for the Services; or</p> <p>(c) notify the Seller that the site is ready.</p> <p>The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage to the Goods if the Client does not accept delivery of the Goods at the time both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Client, the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>Risk</p> <p>Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery. 13. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the fact that the Seller is not liable for any loss or damage without the need for any person dealing with the Seller to make further enquiries.</p> <p>If the Client requests the Seller to leave Goods outside the Seller's premises for collection or delivery the Goods to an unattended 13.2 location, then such Goods shall be left at the Client's sole risk. The Client acknowledges and agrees that whilst the Seller shall take all reasonable care during the performance of the Services, the Client agrees that the Seller shall not be held liable for any loss, damage or cost whatsoever resulting from drilling or fixing the Goods into any masonry or rendered surfaces during the installation process.</p> <p>The Seller is not responsible for the removal of rubbish (including but not limited to rubble or asbestos) from or clean-up of the building/construction sites. This is the responsibility of the Client or the Client's agent.</p> <p>The Client agrees to indemnify the Seller from any loss or damage caused by any other tradesmen (including but not limited to electricians or fully qualified plumbers) by any other third party) during and after the completion of the Services.</p> <p>Accuracy of Client's Plan, Specifications</p> <p>The Client acknowledges that all descriptive specifications, 13.3 illustrations, drawings, data, dimensions, ratings and weights stated in the Client's plan or specifications or any other material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller.</p> <p>The Seller shall be entitled to rely on the accuracy of any designs, specifications, measurements and other information provided (including any CAD designs) by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate designs, specifications, measurements or other information.</p> <p>The Seller's responsibility for the accuracy of any information supplied by the Seller, the Client shall be charged accordingly.</p> <p>Accuracy of Measurements for Orders</p> <p>In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to ensure the accuracy of the measurements and quantities, before the Client or the Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.</p> <p>Client's Responsibilities</p> <p>The Client:</p> <p>(a) acknowledges that:</p> <p>(i) the colour of the Goods are limited to those colours 15.1 provided and the Seller's suppliers at the time of order placement; and</p> <p>(ii) the choice of colour is entirely the responsibility of the Client and as such commencement of manufacture of the Goods and the Client's responsibility to confirm the accuracy of colour from the Seller's current available range;</p> <p>(b) shall ensure that the Seller has clear and free access to the property at all times to enable them to effect Delivery; and</p> <p>(i) fully disclose any information that may affect the Seller's ability to complete the Services; and</p> <p>(ii) the Seller shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless the Client has given written notice to the Seller in advance of the Services; and</p> <p>(iii) in event that adequate access is not made available in accordance with this clause, then Seller may (at its sole discretion) arrange for suitable access to be formed at the Client's cost, of suspend Delivery until such time as adequate access is made available.</p> <p>(c) agrees to:</p> <p>(i) supply temporary lighting, toilet eating and first aid facilities if required;</p> <p>(ii) provide and install all electrical work required with the installation of the Goods. If the Client fails to adhere to the provisions of this clause and the responsibility is passed to the Seller, all costs involved will be charged as an extra in accordance with clause 5.2;</p> <p>(iii) advise the Seller (including without limitation, water, gas, electricity, telephone or any other underground amenity) to the Seller prior to Delivery;</p> <p>(iv) obtain (at the expense of the Client) all necessary licenses and approvals (including building and/or development consent) for the installation of the Goods and fees, that may be required by any public authority;</p> <p>(v) remove from the work area any furniture, personal effects or other property likely to impede the Seller in order to complete the Services; and</p> <p>(vi) acknowledge that Goods (including but not limited to paint, timber, granite, tiles and concrete) supplied may:</p> <p>(i) exhibit variations in shade, colour, texture, surface, finish, markings, veining, and may contain natural blemishes, inclusions and imperfections which may fade or change colour over time. Whilst the Seller will make every effort to match samples to the finished Goods, the Seller accepts no liability whatsoever where such samples differ to the finished Goods;</p> <p>(ii) expand, contract or distort as a result of exposure to heat, cold, weather. The Seller will accept no responsibility for gaps that may appear during prolonged dry periods; and</p> <p>(iii) stain or retain a permanent stain; and</p> <p>(iv) be damaged or disfigured by impact or scratching</p> <p>(e) warrants that the structure of the premises or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.</p> <p>Compliance with Laws</p> <p>The Client and the Seller shall comply with the provisions of all statutory regulations and bylaws of government, local and other public authorities that may be applicable to the Services. The Seller has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Seller by the Client or any other person or authority under the 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, B.D.L shall not be the person who controls the place of work in terms of the HSW Act. The Seller shall obtain (at the expense of the Client) all licenses and approvals that may be required to ensure the safety of the Client. The Client agrees that the site will comply with any work health and safety (WHS) laws relating to the workplace and any other relevant safety standards or legislation.</p> <p>The Seller and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Seller all amounts owing to the Seller; and</p> <p>(b) the Client has met all of its other obligations to the Seller.</p> <p>Receipt by the Seller 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.</p> <p>If the Client is to retain ownership of the Goods passes to the Client in accordance with clause 12.1;</p> <p>(a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on the trust of the Seller and must pay to the Seller all proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of</p>	<p>business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any sale of the Goods for the Seller and must pay or deliver the proceeds to the Seller on demand.</p> <p>(d) The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and the Client must dispose of or return the resulting product to the Seller as it so directs.</p> <p>(e) The Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and to use any possession of the Seller to recover the Goods.</p> <p>(f) The Seller may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) The Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while the Seller retains the property of the Seller.</p> <p>(h) The Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>Personal Property Securities Act 1999 ("PPSA")</p> <p>13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) the Seller is a secured creditor of the Client and the Seller (as secured creditor) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.</p> <p>The Client agrees to register the Seller as a secured creditor of the Client and to sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing charge statement in the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and</p> <p>(d) indemnify the Seller for any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA apply to these terms and conditions. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 128, 131 and 132 of the PPSA. The Client understands and agrees to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>The Client shall unconditionally ratify any actions taken by the Seller under clauses 13.1 to 13.5.</p> <p>Security and Charge</p> <p>14.1 In consideration of the Seller agreeing to supply the Goods, the Client irrevocably assigns to the Seller all rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.</p> <p>The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 and conditions, but not limited to, signing any document on the Client's behalf.</p> <p>Client's Disclaimer</p> <p>15.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution against the Seller in any instance where the Seller has supplied by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.</p> <p>Defects</p> <p>16.1 The Client must inspect all Goods on delivery (or the Services on completion) and must within five (5) days of delivery (time being of the essence) notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Services as soon as it is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller to first inspect the Goods or to review the Services provided, if the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.</p> <p>Notwithstanding the provisions of clause 16.1, in the event where the Client fails to comply with the right to the Seller to have first refusal to inspect any alleged claim and engages another third party to inspect the Goods, the Seller shall not be liable for any loss or damage. Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:</p> <p>(a) the Seller has agreed in writing to accept the return of the Goods; and</p> <p>(b) the Goods are returned at the Client's cost within ten (10) days of the delivery date; and</p> <p>(c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and</p> <p>(d) the Client's Goods are returned with an adjudicator's notice which was delivered with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>The Seller may (in its discretion) accept the return of Goods for credit but this may be subject to a holding fee of ten percent (10%) of the value of the returned Goods plus any freight.</p> <p>Subject to clause 16.1, non-stockist items or Goods made to the Client's specifications are not acceptable for credit or return.</p> <p>Warranty</p> <p>17.1 Subject to the conditions of warranty set out in clause 17.1, the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller shall, at the Seller's sole discretion (replace or remedy the workmanship.</p> <p>The conditions applicable to the warranty given by clause 17.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused by:</p> <p>(i) failure on the part of the Client to properly maintain any Goods; or</p> <p>(ii) failure on the part of the Client to follow any instructions or guidelines detailed in the Client care manual provided by the Seller;</p> <p>(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or</p> <p>(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or</p> <p>(v) fair wear and tear, any accident or act of God.</p> <p>(b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship repaired, altered or overhauled without the Seller's consent;</p> <p>(c) in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship or in properly assessing the Client's claim;</p> <p>For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound or nor be responsible for any term, condition or representation made by any other party which is given by the manufacturer of the Goods.</p> <p>Consumer Guarantees Act 1993</p> <p>If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act, 1993 do not apply to the supply of Goods by the Seller to the Client.</p> <p>Intellectual Property</p> <p>Where the Seller has designed, drawn or developed Goods for the Client, the Client acknowledges that all designs, drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.</p> <p>The Client warrants that the Client's specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.</p> <p>The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.</p>	<p>Default and Consequences of Default</p> <p>20.1 Interest on overdue invoices shall accrue daily from the date when payment is due. The Client shall be liable for a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).</p> <p>20.2 In any event where the Client has failed to pay to the Seller under this contract, if a Client has not made payment to the Seller and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 20 where it can be proved that such failure is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.</p> <p>Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by the Seller;</p> <p>(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>Cancellation</p> <p>21.1 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or cease the supply of Goods to the Client. The Seller shall not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.</p> <p>The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall give to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event of the delivery of Goods made to the Client the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>21.2 The Client agrees to indemnify the Seller for any loss or damage to the Client's specifications or, for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>The Client agrees to provide the Seller with twenty-four (24) hours written notice to cancel the schedule installation date/time. Furthermore, the Client acknowledges that any notification outside this timeframe, all costs associated with said cancellation will be charged as an extra.</p> <p>Privacy Act 1993</p> <p>22.1 The Seller authorises the Seller or the Seller's agent to:</p> <p>(a) access, collect, retain and use any information about the Client; (i) including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or (ii) for the purpose of marketing products and services to the Client.</p> <p>(b) disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any credit reference agency or any credit reference agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.</p> <p>Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993. The Client shall have the right to request the Seller for any of the information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.</p> <p>22.2 The Client expressly agrees to the Seller's use of the Client's information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.</p> <p>23.1 Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any monies owing to it by the Client, the Seller shall be entitled to retain the item until the Seller is repaid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale of goods of an unsecured creditor.</p> <p>23.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any monies owing to the Seller having been obtained against the Client.</p> <p>Construction Contracts Act 2002</p> <p>24.1 The Client irrevocably acknowledges that:</p> <p>(a) the Seller has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and</p> <p>(i) the payment claim is paid in full by the due date for payment and no payment schedule has been given by the Client; or</p> <p>(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or</p> <p>(iii) the Client has failed to comply with an adjudicator's notice that the Client must pay an amount to the Seller by a particular date; and</p> <p>(iv) the Seller has given written notice to the Client of its intention to suspend the carrying out of construction work under the contract.</p> <p>(b) if the Seller suspends work, it:</p> <p>(i) is not in breach of contract; and</p> <p>(ii) is not liable for any loss or damage whatsoever suffered by the Client or any person claiming through the Client; and</p> <p>(iii) is entitled to an extension of time to complete the contract; and</p> <p>(iv) keeps its rights under the contract including the right to suspend 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.</p> <p>(c) if the Seller exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or</p> <p>(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Seller suspending work under this provision.</p> <p>General</p> <p>25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, provided that the contract can be enforced without that provision.</p> <p>25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and be subject to the jurisdiction of the Christchurch Courts of New Zealand.</p> <p>25.3 The Client agrees that the Client shall be liable to the Seller for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>25.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). The Seller may also subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller. The Client agrees that they may amend any terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a payment to the Seller for the Goods to which such changes apply.</p> <p>25.5 Neither party shall be liable for any default or breach of any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>25.7 Both parties warrant that they have the power to enter into this agreement and to bind all necessary subsidiaries to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p>
--	---	---	--