

WHOLE PLUMBING & GAS SOLUTIONS LIMITED TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 "Agreement" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement;
- 1.2 "Commencement Date" means the start date of the performance of the Works;
- 1.3 "Completion Date" means the date the Works are to be completed;
- 1.4 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to this Agreement, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts or personal information;
- 1.5 "Delivery Date" means the date(s) the Materials are collected by us and delivered to the Site;
- 1.6 "Materials" means any goods and/or materials supplied by us at your request from time to time;
- 1.7 "Our", "Us" and "We" and means Whole Plumbing & Gas Solutions Limited, its employees, agents, successors and assigns or any person acting on behalf of and with the authority of Whole Plumbing & Gas Solutions Limited;
- 1.8 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works;
- 1.9 "Site" means the location where the Works are to be carried out by us, as advised by you;
- 1.10 "Working Days" means a day of the week (other than Saturday or Sunday) on which the trading banks are open for normal business in Auckland;
- 1.11 "Works" means services performed by us in accordance with any quotation or any request from You from time to time; and
- 1.12 "You" and "Your" means the person/s, or authorised agent on behalf of a firm, organisation, partnership, corporation and other entity (including trust) requesting us to provide the Works as specified in any proposal, quotation, order, invoice or other documentation provided by us.

2. Agreement

- 2.1 This Agreement sets out the terms and conditions of Works to be provided to you. This Agreement should be read in conjunction with the Whole Plumbing & Gas Solutions Limited Privacy Policy.
- 2.2 You agree that at the time you request any Works or place an order for Works, you exclusively accept and are immediately bound, jointly and severally, by this Agreement.
- 2.3 You agree that we have sole discretion to amend the terms of this Agreement at any time, including by way of posting an updated Agreement on our website WPGS.co.nz.
- 2.4 If we are required to provide the Works urgently and are required to work outside normal business hours (including but not limited to working outside of the hours of 8.30 am – 5 pm, through weekends and/or Public Holidays) then we reserve the right to charge you any additional labour costs (penalty rates will apply), unless otherwise agreed.

- 2.5 If you request us to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to you irrespective of whether or not the repair goes ahead.
- 2.6 You acknowledge and accept that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, we reserve the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 4.2. In all such cases we will notify you in advance of any such substitution, and also reserve the right to place your order and/or Works on hold, as per clause 5.2 until such time as the parties agree to such changes.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8 You acknowledge that any advice or recommendations by us are provided on the basis of our industry knowledge and experience in line with industry standards only and shall not be deemed as specialist advice.
- 2.9 Notwithstanding clause 2.8, you must satisfy yourself that any Materials supplied by us are fit and suitable for the purpose for which they are required. You agree to immediately notify us if any Materials are not suitable for your purposes. We do not make any warranties or representations and expressly negate any implied or expressed condition that the Materials and Works will be suitable for a particular purpose or use for which you may use them. You agree and acknowledge that you accept all risk and responsibility for consequences arising from the use of Materials and Works.

3. Changes to Your Details

- 3.1 At any time your details change (including but not limited to your personal details, address the Works are to be carried out at or change of information of firm, organisation, partnership, corporation or entity related to you which has requested the performance of the Works and provision of Materials), you agree that you will give us not less than fourteen (14) days prior written notice of any proposed change. You acknowledge and agree that you are liable for any loss incurred by us as a result of your failure to comply with this clause.

4. Price and Payment

- 4.1 You acknowledge and agree that the Price for the Works shall be either:
- (a) as indicated on any invoice(s) addressed to you in respect of the Works performed; or
- (b) our quoted Price (subject to clause 4.2), provided that you accept our quoted Price in writing within fourteen (14) days of the date of quote.
- 4.2 We reserve the right to vary the Price:
- (a) if a variation to the Materials which are to be supplied is requested by you or is, in our opinion, required; 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 conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases in the cost of labour or Materials which are beyond our control.

- 4.3 Variations will be charged for on the basis of our quote for the Works, and will be detailed in writing, and shown as variations on our invoice. Objections to such variations must be submitted to us within ten (10) Working Days of our invoice. In absence of any objection to the variations, you agree to pay any charges associated with such variations.
- 4.4 Our invoice(s) will include the Price and any additional charges as set out in clause 4.6.
- 4.5 You agree to pay all of our invoice(s), including any additional charges as set out in clause 4.6, pursuant to the payment instructions specified in our invoice(s).
- 4.6 You must pay as invoiced for the following charges:
- (a) time incurred by us for transportation, delivery or collection in relation to the Materials or performance of the Works, to be charged at our hourly rate of [\$95];
- (b) variation charges pursuant to clauses 4.2 and 4.3;
- (c) default interest for late payment pursuant to clause 17.1 (if applicable);
- (d) any expenses and legal costs incurred by us in enforcing this Agreement due to your default;
- (e) charges for re-supplying the Works at a later time pursuant to clause 5.4;
- (f) storage charges for the Materials; or
- (g) any other fees and charges.

- 4.7 At our sole discretion, we may require a deposit for any Works and Materials. In such cases, the deposit payment will be invoiced.
- 4.8 We have sole discretion to permit the payment of our invoice(s) as follows:
- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with our specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed.
- 4.9 The parties may agree that payment of the Price may be subject to retention by you of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. In such cases, you must hold the Retention 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 Agreement are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.

4.10 Payment of our invoice(s) must be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the parties.

4.11 You are not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to you by us nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by us is a claim made under the Construction Contracts Act 2002.

4.12 Unless otherwise stated the Price does not include GST. In addition to the Price, you must pay us an amount equal to any GST we are required to pay under this or any other Agreement in relation to the Materials. You must pay GST without deduction or set off of any other amounts, at the same time you pay the Price. In addition, you 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.

5. Performance of the Works

5.1 Subject to clause 5.2, we will ensure that the Works start as soon as it is reasonably practicable.

5.2 In the event completion of the Works is or will be delayed by an event beyond our control, including but not limited to any failure by you to:

- (a) make a selection of the Materials or Works (or any part thereof);
- (b) have the Site ready for the Works; or
- (c) notify us that the Site is ready for Works,

We are entitled to an extension to the Completion Date by whatever time is reasonable to complete the Works. We will give you prior written notice of the extension.

5.3 We may perform the Works in separate instalments. In such cases, each separate instalment will be invoiced and must be paid in accordance with the terms and conditions of this Agreement.

5.4 Any time specified by us for the performance of the Works is an estimate only and we will not be liable for any loss or damage incurred by you as a result of performance of the Works being late. However, both parties agree that they shall make every endeavour to enable the Works to be performed at the time and place as was arranged between both parties. In the event that we are unable to perform the Works as agreed solely due to any action or inaction by you, then We are entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

6. Risk

6.1 Risk in and to the Materials shall remain with us until the Materials are installed or fixed where required at the Site. Thereafter, risk in and to the Materials transfers to you.

6.2 If you request us to leave any Materials outside the building at the Site unattended or at another location specified by you, then such Materials

are at your sole risk and you are responsible to ensure the Materials are insured adequately. In the event that such Materials are lost, damaged or destroyed then you are liable for any costs arising from such loss, damage or destroyed Materials (including replacement costs).

6.3 You warrant that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or latent or unfavourable soil conditions such as liquefaction residue or risk) that we, reasonably form the opinion that your premises is not safe for the Works to proceed then we shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 5.2 above) until we are satisfied that it is safe for the installation to proceed.

6.4 If asbestos or any other toxic substances are discovered at the Site that is your responsibility to ensure the safe removal of, you agree to indemnify us against any costs incurred by us as a consequence of such discovery and the subsequent engagement of third-party contractors for the removal of such substances. This will be charged for as a variation in accordance with clause 4.2. Under no circumstances will we handle removal of asbestos product.

6.5 We shall be entitled to rely on the accuracy of any plans, specifications and other information provided by you. You acknowledge and agree that in the event that any information provided by you is inaccurate, we accept no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

6.6 All descriptive specifications, illustrations, drawings, data, dimensions and weights stated in our or any manufacturer's fact sheets, price lists or advertising material, are approximate only. You 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 Agreement, unless expressly stated as such in writing by us.

6.7 We agree to ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, you specifically require the Materials to be installed in any way which goes against our recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to us. We provide no warranty in regards to any Works you have requested that are not fully compliant with industry standards.

6.8 Where you have supplied Materials for us to complete the Works ("Your Materials"), you acknowledge and accept responsibility for the suitability of purpose, quality and any faults inherent in Your Materials. We are not responsible for any defects in the Works, any deterioration, loss or damage in or to Your Materials howsoever arising from the use of Your Materials. We will use reasonable skill and care in the Works, however, you acknowledge that any loss or damage to Your Materials and/or existing fixtures, fittings or property during the Works shall be at your own risk.

6.9 We are only responsible for Materials that are replaced by us, and in the event that other components, subsequently fail, you agree to indemnify us against any loss or damage to the Works, or caused by the components, or any part thereof howsoever arising.

6.10 The presence of plant or tree root growth and/or other blockages may indicate damaged pipe

work and therefore where we are requested to merely clear such blockages, we offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, we will immediately advise you of the same and shall provide you with an estimate for the full repair of the damaged pipe work.

6.11 If you request us to use drain/pipe unblocking equipment, and we do not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, we may require you or your agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, you shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.

6.12 You acknowledge and accept that where we have performed temporary repairs:

- (a) We offer no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) We will immediately advise you of the fault and shall provide us with an estimate for the full repair required.

6.13 You acknowledge that Materials supplied may:

- (a) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. We 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;
- (b) expand, contract or distort as a result of exposure to heat, cold, weather;
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.

7. Your Responsibilities

7.1 Prior to us commencing the Works, you must advise us of the precise location of all services at the Site and clearly mark the same. The mains and services you must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site. Whilst we will take all care to avoid damage to any hidden services, you agree to indemnify us 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 this clause 7.1.

7.2 You are responsible for the following:

- (a) Ensuring that we have clear and free access to the Site at the agreed date/s and time/s to enable us to undertake the Works. We are not liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to our negligence;
- (b) Removing any furniture, furnishings or personal goods from the vicinity of the Works. You agree that we are not liable for any damage caused to those items through your failure to comply with this clause;

- (c) Providing adequate dust sheets to protect your furniture and décor. We are not responsible for cleaning or repair costs attributed to dust or damage caused by the Works;
- (d) Removal of all rubbish from or clean-up of the Site, unless otherwise agreed between the parties at the time of quotation. Under no circumstances will we handle removal of asbestos or other toxic substances; and
- (e) Providing us with facilities, as specified by us, (including, but not limited to, a suitable free power source) for the duration of the Works.

8. Compliance with Laws

- 8.1 The parties will 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 guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 8.2 You must obtain, at your expense, all licenses, approvals, applications and permits that may be required for the Works.
- 8.3 We have not, and will not, at any time assume any obligation as your agent or otherwise which may be imposed upon you from time to time pursuant to the Health & Safety at Work Act 2015, including any subsequent regulations (the "HSW Act") arising from the engagement of Works under this Agreement. Unless otherwise agreed, for the purposes of the HSW Act, We are not a person who controls the place of work in terms of the HSW Act.

9. Title

- 9.1 The parties agree that ownership of the Materials shall not pass until:
 - (a) you have paid Us all amounts owing to us; and
 - (b) you have met all of your other obligations to us.
- 9.2 Receipt of any form of payment other than cash shall not be deemed to be payment until that form of payment has been made by way of cleared funds.
- 9.3 The parties agree that:
 - (a) until ownership of the Materials passes to you in accordance with clause 9.1, you are only a bailee of the Materials and unless the Materials have become fixtures, you must return the Materials to us on request;
 - (b) you hold the benefit of your insurance of the Materials on trust for us and must pay us the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) this Agreement shall be sufficient evidence of our rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with us to make further enquiries;
 - (d) you must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If you sell, dispose or part with possession of the Materials then you must hold the proceeds of any such act on trust for us and must pay or deliver the proceeds to us on demand;

- (e) you must not convert or process the Materials or intermix them with other goods. If you have done this, then you hold the resulting product on trust for our benefit and must sell, dispose of or return the resulting product to us as directed by us;
- (f) unless the Materials have become fixtures, you irrevocably authorise us to enter any premises where we believe the Materials are kept and recover possession of the Materials;
- (g) you agree that you will not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain our property; and
- (h) you agree that we may commence proceedings to recover the costs of the Materials sold notwithstanding that ownership of the Materials has not passed to you.

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

- 10.1 You acknowledge and agree that:
 - (a) this Agreement constitutes a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation by you to us for Works – that have previously been supplied and that will be supplied in the future by us to you.
 - 10.2 You undertake to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which we may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, us for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby; and
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without our prior written consent.
 - 10.3 The parties agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement.
 - 10.4 You waive your rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 10.5 Unless otherwise agreed to in writing by us, you waive your right to receive a verification statement in accordance with section 148 of the PPSA.
 - 10.6 You unconditionally ratify any actions taken by us under clauses 10.1 to 10.5.
- ## 11. Security and Charge
- 11.1 In consideration of our agreement to perform the Works, you agree to charge all of your rights, title and interest (whether joint or several) in any land,

realty or other assets capable of being charged, owned by you either now or in the future, to secure the performance of your obligations under this Agreement (including, but not limited to, the payment of any money).

- 11.2 You agree to indemnify us from and against all our costs and disbursements, including legal costs on a solicitor client basis, incurred in exercising our rights under clause 11.

- 11.3 You irrevocably appoint us and each of our directors as your true and lawful attorney/s to perform all necessary acts to give effect to the provisions of clause 11 including, but not limited to, signing any document on Your behalf.

12. Defects In Materials

- 12.1 You shall inspect the Materials immediately on delivery and/or installation at the Site and shall within seven (7) days of delivery and/or installation at the Site (time being of the essence) notify us of any alleged defect, deterioration, shortage in quantity, damage or failure to comply with the description or quote. You shall give us an opportunity to inspect the Materials within a reasonable time following delivery if you believe the Materials are defective in any way. If you shall fail to comply with these provisions, the Materials shall be presumed to be free from any defect or damage. For defective Materials, which we have agreed in writing that you are entitled to reject, your liability is limited to either (at our discretion) replacing the Materials or repairing the Materials.
- 12.2 Materials will not be accepted for return other than in accordance with clause 12.1 above.

13. Returns

- 13.1 Return of Materials will only be accepted provided that:
 - (a) you have complied with the provisions of clause 12.1;
 - (b) we have agreed in writing to accept the return of the Materials;
 - (c) the Materials are returned at your cost within seven (7) days of the Delivery Date;
 - (d) we are not liable for Materials which have not been stored 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.
- 13.2 We may, in our discretion, accept the return of non-defective Materials but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any transportation or freight charges.
- 13.3 Non-stocklist items or Materials made to your specifications are under no circumstances acceptable for return.

14. Warranties

- 14.1 Subject to the conditions of warranty set out in clause 14.2, we warrant that if any defect in any of our Works becomes apparent and is reported to us by you within twelve (12) months of the Delivery Date (time being of the essence) then we will either (at our sole discretion) replace or remedy the Works.
- 14.2 The conditions applicable to the warranty given by clause 14.1 are:

(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- I. any failure by you to properly maintain any Materials;
- II. any failure by you to follow any instructions or guidelines provided by us;
- III. any use of Materials or Works otherwise than for any application specified on a quote or order form or their usual and reasonable use;
- IV. the continued use of any Materials or Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- V. fair wear and tear, any accident or act of God.

(b) The warranty shall cease and we shall thereafter in no circumstances be liable under the terms of the warranty if the Works are repaired, altered or overhauled without our consent; or

(c) In respect of all claims, we shall not be liable to compensate you for any delay in either replacing or remedying the workmanship or in properly assessing your claim.

14.3 For Materials not manufactured by us, the warranty shall be the current warranty provided by the manufacturer of the Materials. We are not bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

15. Consumer Guarantees Act 1993

15.1 For the purposes of this Agreement, you are a "consumer" for the purposes of the Consumer Guarantees Act 1993 ("CGA") and/or the Fair Trading Act 1986. Nothing in this Agreement affects, or attempts to exclude in any way, your rights under the CGA.

15.2 If you are in trade (within the meaning of the CGA) and the Materials are supplied to you and acquired by you in trade, the parties confirm, acknowledge and agree that the statutory guarantees and implied terms, covenants and conditions contained in the CGA do not apply.

16. Confidentiality and Intellectual Property

16.1 The parties agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

16.2 Where we have designed, drawn, written plans or a schedule of Works, or created any products for you, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in us and shall only be used by you at our discretion. Under no circumstances may such designs, drawings and documents be used without our express written approval.

16.3 You warrant that all designs, specifications or instructions given to us will not cause us to infringe any patent, registered design or trademark in the execution of the Works and You agree to indemnify us against any action taken by a third party against us in respect of any such infringement.

16.4 You agree that we may (at no cost to us) use for the purposes of marketing or entry into any

competition, any documents, designs, drawings, plans, products or Materials which we have created for you.

17. Default and Consequences of Default

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

17.2 If you owe us any money, you agree to indemnify us from and against all costs and disbursements incurred by Us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor client basis, our collection agency costs, and bank dishonour fees).

17.3 Further to any other rights or remedies we may have under this Agreement, if you have made payment to us, and the transaction is subsequently reversed, you shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by us under clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to your obligations under this Agreement.

17.4 Without prejudice to our other remedies at law, we shall be entitled to cancel all or any part of any order or Works which remain unfulfilled and all amounts owing to us shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to us becomes overdue, or in our opinion you are or will be unable to make a payment when it falls due;
- (b) you become insolvent or bankrupt, convene a meeting with your creditors or you propose or enter into an arrangement with creditors, or make an assignment for the benefit of your creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed for you or any of your assets.

18. Cancellation

18.1 Without prejudice to any other rights or remedies we may have, if at any time you are in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Agreement within ten (10) Working Days of receipt by you of such notice/s) then we may suspend the Works immediately. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause.

18.2 We may cancel any contract to which this Agreement applies or cancel delivery of Works at any time before the Works are commenced by giving written notice to you. On giving such notice, we shall repay you any sums paid to you, less any amounts owed by you to us for Works already performed and materially already supplied. We shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.3 In the event you cancel the delivery of Works, you agree that you are liable for any and all loss incurred (whether direct or indirect) by us as a direct result of the cancellation (including, but not limited to, any loss of profits).

18.4 Cancellation of orders for Materials made to your specifications, or for non-stocklist items, will not be accepted once production of such Materials has commenced, or an order has been placed.

19. Privacy Act 2020

19.1 You consent to us obtaining such information and making such enquiries about you from any source, including credit reference, reporting agencies and companies related to us, in relation to this Agreement and disclosing information about you to credit reference agencies, companies related to us, sureties, our financiers, the trustee under any debenture trust deed granted by us or assignees or anyone who is considering becoming a surety or assignee. A person has the right to access personal information (within the meaning of the Privacy Act 2020) held by us and request correction of any errors in that information.

20. Suspension of Works

20.1 Where the Agreement is subject to the Construction Contracts Act 2002, you hereby expressly acknowledge that:

(a) We have the right to suspend Works within five (5) Working Days of written notice of our intent to do so if a payment claim is served on you, and:

- I. the payment is not paid in full by the due date for payment as set out on the invoice(s) and /or any subsequent amendments or new legislation and no payment schedule has been received from you;
- II. a scheduled amount stated in a payment schedule issued by us in relation to the payment claim is not paid in full by the due date for its payment;
- III. you have not complied with an adjudicator's notice that you must pay an amount to Us by a particular date; and
- IV. we have given written notice to you of our intention to suspend the carrying out of construction work under the construction contract.

(b) If we suspend Works, we:

- I. are not in breach of this Agreement;
- II. are not liable for any loss or damage whatsoever suffered, or alleged to be suffered by you or by any person claiming through you;
- III. are entitled to an extension of time to complete the Works; and
- IV. keep our rights under this Agreement, including the right to terminate the Agreement; 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 we exercise the right to suspend Works, the exercise of that right does not:

- I. affect any rights that would otherwise have been available to us under the Contract and Commercial Law Act 2017; or
- II. enable you to exercise any rights that may otherwise have been available to you under the Contract and Commercial Law Act 2017 as a direct consequence of our suspending Works under this provision.

(d) If due to any act or omission by you, we are effectively precluded from continuing the Works or performing or complying with our obligations under this Agreement, then without prejudice to our other rights and remedies, we may

suspend the Works immediately after serving written notice to you specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by us as a result of such suspension and recommencement shall be payable by you as if they were a variation under this Agreement.

20.2 If pursuant to any right conferred by this Agreement, we suspend the Works and the default that led to that suspension continues un-remedied subject to clause 18.1 for at least ten (10) Working Days, We shall be entitled to terminate the Agreement, in accordance with clause 18.

21. Service of Notices

21.1 Any written notice given under this Agreement shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Agreement;
- (c) by sending it by registered post to the address of the other party as stated in this Agreement; or
- (d) if sent by email, to the other party's last known email address.

21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21.3 No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee: received:

- (a) in the case of personal delivery, when delivered if on a Working Day, otherwise on the next Working Day;
- (b) in the case of post, on the fourth Working Day after posting;
- (c) if emailed, 24 hours after the email is sent provided no indication is received that the delivery of the email failed.

22. Trusts

22.1 If you at any time upon or subsequent to entering in to this Agreement are acting in the capacity of trustee of any trust ("Trust") then whether or not we may have notice of the Trust, you covenant with us as follows:

- (a) This Agreement extends to all rights of indemnity which you may have against the Trust and the trust fund;
- (b) You have full and complete power and authority under the Trust to enter into this Agreement and the provisions of the Trust do not purport to exclude or take away

your right of indemnity against the Trust or the trust fund. You 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; and

(c) You will not without our consent in writing (we will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:

- I. your removal, replacement or retirement 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.

23. Force Majeure

23.1 Neither party will be liable for any act, omission or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from a Force Majeure Event.

23.2 A Force Majeure Event means a force reasonably beyond a party's control, including but not limited to:

- (a) floods, earthquakes and other natural disasters;
- (b) an act of war or terrorism;
- (c) a strike, lock-out and industrial action;
- (d) pandemics or epidemics; or
- (e) any other event beyond the reasonable control of either party.

23.3 The party who cannot carry out its obligations under this Agreement due to a Force Majeure Event must give the other party notice as soon as practicable of the cause and insofar as it is known the probable extent to which the party giving the notice will be unable to perform, or will be delayed in performing its obligation under this Agreement.

23.4 On the issue of notice of a Force Majeure Event the obligations of the party giving the notice will be suspended insofar as that party is prevented during the continuation or intervention of such cause to carry out its obligations under this Agreement.

23.5 The party giving notice of a Force Majeure Event must take all reasonable steps to mitigate the effects of and eliminate the intervening event and must resume performance of its obligations as promptly as is practicable.

24. Dispute Resolution

24.1 Where any dispute or difference arises concerning the rights and obligations of the

parties or interpretation of this Agreement, then either party shall notify the other party of the dispute or difference, with such notice identifying and providing details of the dispute or difference.

24.2 Where notice has been given pursuant to clause 24.1, the parties will first endeavour to resolve any such dispute or difference by agreement and, if they agree, by mediation. Unless any dispute or difference is resolved within 30 Working Days of the dispute or difference having been notified in writing by one party to the other, then either party may at any time require the dispute or difference to be referred to adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

24.3 Notwithstanding any other term of this Agreement, we shall be entitled to enforce this Agreement and our rights and remedies by any other means, including proceedings in Court.

25. General

25.1 The failure by either party to enforce any provision of this Agreement 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 this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2 This Agreement and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

25.3 We shall be under no liability whatsoever to you for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by you arising out of a breach by us of this Agreement (alternatively our liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

25.4 We may licence and/or assign all or any part of our rights and/or obligations under this Agreement without Your consent.

25.5 You cannot licence or assign without our prior written approval.

25.6 We may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Agreement by so doing. You agree and understand that you have no authority to give any instruction to any of our sub-contractors without our authority.

25.7 You agree that we may amend this Agreement by notifying you in writing. These changes shall be deemed to take effect from the date we notify you of such changes.

25.8 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.