

**1. Definitions**

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “TCL” means Tatana Contracting Limited, its successors and assigns or any person acting on behalf of and with the authority of Tatana Contracting Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TCL to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by TCL to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 “Site” means the address nominated by the Client at which the Works are to be undertaken by TCL.
- 1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.8 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between TCL and the Client in accordance with clause 6 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with TCL and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Clients credit limit and/or the account exceeds the payment terms, TCL reserves the right to refuse delivery.
- 2.6 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.
- 2.7 In the event that TCL is required to provide the Works urgently, that may require TCL’s staff to work outside normal working hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then TCL reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between TCL and the Client.
- 2.8 These terms and conditions may be meant to be read in conjunction with TCL’s Hire Form, and:
- (a) where the context so permits, the terms ‘Works’ or ‘Materials’ shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

**3. Authorised Representatives**

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

**4. Errors and Omissions**

- 4.1 The Client acknowledges and accepts that TCL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by TCL in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TCL in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of TCL; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

**5. Change in Control**

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

**6. Price and Payment**

- 6.1 At TCL’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by TCL to the Client in respect of Works performed or Materials supplied; or
  - (b) TCL’s Price at the date of delivery of the Works according to TCL’s current pricelist; or

## Tatana Contracting Limited – Terms & Conditions of Trade

- (c) TCL's quoted Price (subject to clause 6.2) which shall be binding upon TCL provided that the Client shall accept TCL's quotation in writing within thirty (30) days.
- 6.2 TCL reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather, obstructions in accessing the Site, availability of equipment and/or machinery, obscured Site defects, safety considerations and/or health hazards (such as the discovery of asbestos and/or other toxic materials, etc.), hard rock barriers below the surface, latent soil conditions, presence of concrete, underground locations (as per clause 10), or prerequisite work by any third party not being completed etc.) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to TCL in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond TCL's control.
- 6.3 Variations will be charged for on the basis of TCL's quotation, and will be detailed in writing, and shown as variations on TCL's invoice. The Client shall be required to respond to any variation submitted by TCL within ten (10) working days. Failure to do so will entitle TCL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At TCL's sole discretion a non-refundable deposit may be required, the deposit amount or percentage of the Price will be stipulated TCL's quotation and shall become immediately due and payable.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by TCL, which may be:
- (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with TCL's 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 Site but not yet installed;
  - (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TCL.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall 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 Contract is to be dealt with in accordance with section 18(a) to 18(i) of the Construction Contracts Act 2002.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and TCL.
- 6.8 TCL may in its discretion allocate any payment received from the Client towards any invoice that TCL determines and may do so at the time of receipt or at any time afterwards. On any default by the Client TCL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TCL, payment will be deemed to be allocated in such manner as preserves the maximum value of TCL's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 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 TCL nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by TCL is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to TCL an amount equal to any GST TCL must pay for any supply by TCL under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.11 Receipt by TCL 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 and until then TCL's ownership or rights in respect of the Works, and this Contract, shall continue.
- 6.12 TCL and the Client agree that the Client's obligations to TCL for the provision the Works shall not cease until:
- (a) the Client has paid TCL all amounts owing to TCL; and
  - (b) the Client has met all other obligations due by the Client to TCL in respect of all contracts between TCL and the Client.
7. **Provision of the Works**
- 7.1 Subject to clause 7.2 it is TCL's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that TCL claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond TCL's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the Site ready for the Works; or
  - (c) notify TCL that the Site is ready.
- 7.3 At TCL's sole discretion the cost of delivery is included in the Price.
- 7.4 TCL may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by TCL for delivery of the Works is an estimate only and TCL will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that TCL is unable to supply the Works as agreed solely due to any action or inaction of the Client, then TCL shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

**8. Risk**

- 8.1 If TCL retains ownership of the Materials under clause 13 then:
- (a) where TCL is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Client or the Client's nominated carrier takes possession of the Materials at TCL's address; or
    - (ii) the Materials are delivered by TCL or TCL's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where TCL is to both supply and install Materials then TCL shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests TCL to leave Materials outside TCL's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 TCL shall be entitled to rely on the accuracy of any plans, specifications, geotechnical reports and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, TCL accepts no responsibility for any loss, damages, or costs however resulting from these inaccuracies or where decisions need to be made by TCL in the Client absence because the Client has failed to comply with this clause.
- 8.4 Where TCL requires that Materials, plant and tools required for the Works be stored at the Site, the Client shall supply TCL a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 8.5 Any advice, recommendation, information, assistance or service provided by TCL in relation to Works provided is given in good faith, is based on TCL's own knowledge and experience and shall be accepted without liability on the part of TCL and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Works.
- 8.6 The final location of the exact drilling or excavation Site must be determined on the Site by the Client and is the Client's sole responsibility.
- 8.7 If during the drilling operation, and as a result of extraordinary down hole issues, TCL decides (based on industry experience) that the risk is too great to continue the hole, TCL shall advise the Client, or the Client's agent, regarding the risk of continuing. Where such advice is not acted on, and TCL is requested on continue, then TCL shall require the Client or their agent to authorise the continuance of the Works in writing. TCL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent continuance of the Works, and the Client shall reimburse TCL for any equipment lost at the landed, new cost price of the replacement equipment.
- 8.8 In the event that during the course of the Works TCL discovers any:
- (a) undisclosed waste and/or hazardous materials then TCL reserves the right to halt all Works and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that TCL agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 6.2 and shall be in addition to the Price. Furthermore TCL will:
    - (i) only remove asbestos found in pipelines; and
    - (ii) under no circumstances shall undertake the removal of any other asbestos discovered; and
  - (b) if fossils, artefacts or any other remains of geological or archaeological interest are discovered TCL reserves the right to halt all Works, remove any of their equipment from the Site and immediately notify the Client. Unless subject to clause 27.9, the Client accepts and agrees that all additional costs that may be incurred by TCL as a result of any such delays (including but not limited to in the event TCL is unable to remove their equipment from the Site, etc.) shall be borne by the Client and shall be treated as a variation in accordance with clause 6.2.
- 8.9 The Client acknowledges that:
- (a) whilst TCL shall make all endeavours to remove from the Site all rubbish, excavated material, vegetation, demolished or dismantled structures, TCL shall not be held liable for any small amounts of rubbish, and the like, remaining at the Site; and
  - (b) under no circumstances, will TCL handle removal of asbestos / hazardous materials product. In the event asbestos / hazardous materials is discovered on Site:
    - (i) TCL shall suspend the Works; and
    - (ii) The Client shall be fully responsible for the resolution of any resulting problems; and
    - (iii) any additional cost incurred by TCL shall be added to the Price under clause 6.2.
- 8.10 In the event that any work is undertaken by the Client (or any third party on behalf of the Client), then it shall be the Client's responsibility to ensure that work is executed in accordance with clause 11.1. TCL shall not be liable for any loss or damage, howsoever caused, as a result of any work performed by the Client (or any third party on behalf of the Client).

**9. Site Access and Condition**

- 9.1 The Client is solely responsible for providing immediate, free, clear, and safe access to the Site, and:
- (a) that such access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by TCL; and
  - (b) TCL shall not be liable for any loss or damage to the Site (including, without limitation, damage to roads, access routes to the property, pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of TCL; and
  - (c) the Client agrees to indemnify TCL against all costs incurred by TCL in recovering such vehicles in the event they become bogged or otherwise immovable; and
  - (d) if the Works are interrupted by the failure of the Client to adhere to the work schedule agreed to between TCL and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 6.2.

**10. Underground Locations**

- 10.1 Prior to TCL commencing any work the Client must advise TCL of the precise location of all underground services on the Site and clearly mark the same. The underground mains & services the Client 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

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## Tatana Contracting Limited – Terms & Conditions of Trade

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- cables, oil pumping mains, and any other services that may be on the Site. The Client shall be responsible for any costs associated with locating any of the above services as required.
- 10.2 Whilst TCL will take all care to avoid damage to any underground services the Client agrees to indemnify TCL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
- 11. Compliance with Laws**
- 11.1 The Client and TCL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating to building/construction sites and any other relevant safety standards or legislation particularly those in relation to asbestos / hazardous materials and the safe removal and disposal of the same.
- 11.2 The Client shall:
- (a) be liable for any costs incurred by TCL due to the Client's failure to comply with clause 11.1; and
  - (b) obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Works.
- 11.3 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") TCL agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Site or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
- 12. Insurance**
- 12.1 TCL shall have public liability insurance of at least five million dollars (\$5M). It is the Client's responsibility to ensure that they are similarly insured.
- 13. Title**
- 13.1 TCL and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid TCL all amounts owing to TCL; and
  - (b) the Client has met all of its other obligations to TCL.
- 13.2 Receipt by TCL 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to TCL on request;
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for TCL and must pay to TCL the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
  - (c) the production of these terms and conditions by TCL shall be sufficient evidence of TCL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with TCL to make further enquiries;
  - (d) the Client 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 the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for TCL and must pay or deliver the proceeds to TCL on demand;
  - (e) the Client should not convert or process the Materials 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 TCL and must sell, dispose of or return the resulting product to TCL as it so directs;
  - (f) unless the Materials have become fixtures the Client irrevocably authorises TCL to enter any premises where TCL believes the Materials are kept and recover possession of the Materials;
  - (g) TCL may recover possession of any Materials in transit whether or not delivery has occurred;
  - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of TCL;
  - (i) TCL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 14. Personal Property Securities Act 1999 ("PPSA")**
- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to TCL for Works – that have previously been supplied and that will be supplied in the future by TCL to the Client.
- 14.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TCL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, TCL 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;
  - (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 the prior written consent of TCL; and
  - (d) immediately advise TCL of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.3 TCL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by TCL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by TCL under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**15. Security and Charge**

- 15.1 In consideration of TCL agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies TCL from and against all TCL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TCL's rights under this clause.
- 15.3 The Client irrevocably appoints TCL and each director of TCL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

**16. Defects In Materials**

- 16.1 The Client shall inspect the Materials on delivery and shall within two (2) days of delivery (time being of the essence) notify TCL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford TCL an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which TCL has agreed in writing that the Client is entitled to reject, TCL's liability is limited to either (at TCL's discretion) replacing the Materials or repairing the Materials.

**17. Returns**

- 17.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
  - (b) TCL has agreed in writing to accept the return of the Materials; and
  - (c) the Materials are returned at the Client's cost within five (5) days of the delivery date; and
  - (d) TCL will not be 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.
- 17.2 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

**18. Warranties**

- 18.1 Subject to the conditions of warranty set out in clause 18.2 TCL warrants that if any defect in any workmanship of TCL becomes apparent and is reported to TCL within six (6) months of the date of delivery (time being of the essence) then TCL will either (at TCL's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Materials; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by TCL; or
    - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Materials 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 TCL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without TCL's consent.
  - (c) in respect of all claims TCL shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 18.3 For Materials not manufactured by TCL, the warranty shall be the current warranty provided by the manufacturer of the Materials. TCL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

**19. Consumer Guarantees Act 1993**

- 19.1 If the Client is acquiring Materials 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 Materials by TCL to the Client.

**20. Intellectual Property**

- 20.1 Where TCL has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in TCL, and shall only be used by the Client at TCL's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of TCL.
- 20.2 The Client warrants that all designs, specifications or instructions given to TCL will not cause TCL to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TCL against any action taken by a third party against TCL in respect of any such infringement.
- 20.3 The Client agrees that TCL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which TCL has created for the Client.

**21. Default and Consequences of Default**

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TCL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes TCL any money the Client shall indemnify TCL from and against all costs and disbursements incurred by TCL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TCL's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies TCL may have under this Contract, if a Client has made payment to TCL, 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 TCL

- under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to TCL's other remedies at law TCL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TCL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TCL becomes overdue, or in TCL's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by TCL;
  - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
22. **Cancellation**
- 22.1 Without prejudice to any other rights or remedies TCL may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then TCL may suspend the Works immediately. TCL will not be liable to the Client for any loss or damage the Client suffers because TCL has exercised its rights under this clause.
- 22.2 TCL may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice TCL shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to TCL for Works already performed. TCL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by TCL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
23. **Privacy Policy**
- 23.1 All emails, documents, images or other recorded information held or used by TCL is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. TCL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TCL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by TCL that may result in serious harm to the Client, TCL will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to TCL in respect of Cookies where transactions for purchases/orders transpire directly from TCL's website. TCL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to TCL when TCL sends an email to the Client, so TCL may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via TCL's website.
- 23.3 The Client authorises TCL or TCL's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by TCL from the Client directly or obtained by TCL from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request TCL for a copy of the Personal Information about the Client retained by TCL and the right to request TCL to correct any incorrect Personal Information about the Client held by TCL.
24. **Suspension of Works**
- 24.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) TCL has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
    - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to TCL by a particular date; and
    - (iv) TCL has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
  - (b) if TCL suspends work, it:
    - (i) is not in breach of Contract; and

- (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
  - (iii) is entitled to an extension of time to complete the Contract; and
  - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if TCL exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to TCL under the Contract and Commercial Law Act 2017; or
  - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of TCL suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes TCL from continuing the Works or performing or complying with TCL's obligations under this Contract, then without prejudice to TCL's other rights and remedies, TCL may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by TCL as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 24.2 If pursuant to any right conferred by this Contract, TCL suspends the Works and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, TCL shall be entitled to terminate the Contract, in accordance with clause 22.
25. **Service of Notices**
- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 25.2 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.
26. **Trusts**
- 26.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not TCL may have notice of the Trust, the Client covenants with TCL as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Client will not without consent in writing of TCL (TCL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
27. **General**
- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Levin District Courts of New Zealand.
- 27.4 TCL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TCL of these terms and conditions (alternatively TCL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 TCL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.6 The Client cannot licence or assign without the written approval of TCL.
- 27.7 TCL may elect to subcontract out any part of the Works 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 TCL's sub-contractors without the authority of TCL.
- 27.8 The Client agrees that TCL may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for TCL to provide Works to the Client.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.