



TERMS & CONDITIONS

1. Definitions

- 1.1 "Agent" means PSP Stonecraft Limited, its successors and assigns or any person acting on behalf of and with the authority of PSP Stonecraft Limited.
- 1.2 "Buyer" means the person or entity obtaining Goods or Services from the Agent, or person/s or any person acting on behalf of and with the authority of the Buyer requesting the Agent to provide the Goods or Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Buyer, is a reference to each Buyer jointly and severally; and
 - (b) if the Buyer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Buyer's executors, administrators, successors and permitted assigns.
- 1.3 "Guarantor" means the person(s) named as guarantor in the Credit Account Application.
- 1.4 "Goods" means all goods supplied by the Agent to the Buyer at the Buyer's request from time to time.
- 1.5 "Price" means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods or Services as agreed between the Agent and the Buyer in accordance with clause 5 below.
- 1.6 "Services" means all installation and related services provided by the Agent to the Buyer in respect of the Goods from time to time.

2. Acceptance

- 2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for Goods or engages the Agent to provide the Services.
- 2.2 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.

3. Errors and Omissions

- 3.1 The Buyer acknowledges and accepts that the Agent shall without prejudice, accept no liability in respect of any alleged or actual error(s) or omission(s):
 - (a) resulting from any mistake made by the Agent in the formation or administration of these terms and conditions; or
 - (b) contained in/omitted from any literature (hard copy or electronic) supplied by the Agent in respect of the Goods or Services.
- 3.2 In the event such an error or omission occurs in accordance with clause 3.1, and is not attributable to the wilful misconduct of the Agent, the Buyer shall not be entitled to treat these terms and conditions as repudiated nor render them invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 The Buyer acknowledges that the supply of Goods or Services on credit shall not take effect until the Buyer has completed a credit application with the Agent and it has been approved with a credit limit established for the account. The Agent shall reserve the right to require a personal guarantee as part of the credit application process.
- 5.2 In the event that the supply of Goods or Services request exceeds the Buyer's credit limit or the account exceeds the payment terms, the Agent reserves the right to refuse the delivery of the Goods or the provision of the Services, or request an alternative payment method.
- 5.3 At the Agent's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Agent to the Buyer; or
 - (b) the Price as at the date of Delivery of the Goods according to the Agent's current price list; or
 - (c) the Agent's quoted Price (subject to clause 5.4) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.



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5.4 The Agent reserves the right to change the Price if a variation to the Agent's quotation is requested. Any variation from the plan of scheduled Goods, Services or specifications (including, but not limited to, any variation as a result of availability of stock, quantities ordered or as a result of any increase to the Agent in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange or international freight and insurance charges) and labour) will be shown as variations on the invoice and the Agent will be entitled to add the cost of the variation to the Price.

5.5 At the Agent's sole discretion a non-refundable deposit may be required from the Buyer.

5.6 Time for payment for the Goods or Services being of the essence, the Price will be payable by the Buyer on the date/s determined by the Agent, which may be:

- (a) on Delivery of the Goods;
- (b) by way of instalment payments in accordance with the Agent's payment schedule;
- (c) for certain approved Buyers, due twenty (20) days following the end of the month in which a statement is sent to the Buyer'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 Buyer by the Agent.

5.7 In respect of the Services and the agreement of both parties, payment of the Price for Services may be subject to retention by the Buyer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Buyer shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed or all defects are to be remedied. Any Retention Money applicable to these terms and conditions are to be dealt with in accordance with part 2 of the Construction Contracts Act 2002.

5.8 Payment may be made by cash, cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Buyer and the Agent.

5.9 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Agent or withhold payment of any invoice because part of that invoice is in dispute.

5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Buyer must pay to the Agent an amount equal to any GST that the Agent must pay for any supply by the Agent under this or any other contract for the sale of the Goods or provision of Services. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer 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.

5.11 The Price and any other money payable in accordance with these terms and conditions shall be in \$NZD.

6. Delivery

6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Agent's address;
- (b) the Agent (or the Agent's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address; or
- (c) If applicable, the Agent installs the Goods at the premises.

6.2 At the Agent's sole discretion, the cost of delivering or shipping the Goods to the Buyer is in addition to the Price.

6.3 Any time specified by the Agent for delivery of the Goods is an estimate only. The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Agent will not be liable for any loss or damage incurred by the Buyer as a result of delivery being late. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery or storage.

6.4 The Agent 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.

6.5 Subject to clause 6.6, it is the Agent's responsibility to ensure that the Services, where applicable, start as soon as is reasonably possible.

6.6 The Agent will be entitled to, by giving written notice to the Buyer, delay the commencement date for the Services or extend the completion date for the Services by whatever time is reasonable in the event that there is a delay beyond the Agent's control, including but not limited to any failure by the Buyer to:

- (a) make a selection of the Goods or Services to be provided by the Agent; or
- (b) have the premises ready for the Services; or
- (c) notify the Agent that the premises is ready.



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6.7 If for any reason the Agent, or employees of the Agent, reasonably form the opinion that the Buyer's premises is not safe for the provision of the Services to proceed, then the Agent shall be entitled to delay the provision of the Services (in accordance with the provisions of clause 6.6 above) until the Agent is satisfied that it is safe for the provision of such Services to proceed.

7. Risk

7.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Buyer, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.

7.3 If the Buyer requests the Agent to leave Goods outside the Agent's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.

7.4 The Agent shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Buyer. The Buyer acknowledges and agrees that in the event that any of this information provided by the Buyer is inaccurate, the Buyer shall indemnify and keep indemnified the Agent against any loss, damages, expenses or costs however resulting from these inaccurate plans, specifications or other information.

7.5 The Buyer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed.

7.6 The Buyer acknowledges that Goods supplied may:

- (a) fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching; and
- (e) become damaged or otherwise malfunction as a result of any misuse or usage that is not in accordance with any instructions for the Goods contained in any user/manufacturer guide, manual or other directions.

7.7 The Buyer acknowledges that Goods such as stone are subject to natural variations in colour, grain and texture and therefore:

- (a) the actual Goods purchased may vary considerably from any sample of such Goods;
- (b) photographs of such Goods are of a general nature only;
- (c) the Agent cannot guarantee that any shipment of such Goods will be the same colour, grain or texture, as other shipments of the same types of Goods; and
- (d) in order to ensure that such Goods meet with the Buyer's requirements, the Buyer should personally select such Goods when placing an order.

7.8 Marble and granite are porous products, therefore, all products supplied by the Agent are sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Buyer agrees to indemnify the Agent against any damage occurring after Delivery of the Goods.

8. Product Specifications

8.1 The Buyer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Agent's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Buyer 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 these terms and conditions, unless expressly stated as such in writing by the Agent

9. Access

9.1 The Buyer shall ensure that the Agent has clear and free access to the premises at all times to enable them to undertake the Services. The Agent shall not be liable for any loss or damage caused by the Agent accessing the premises, unless such loss or damage is due to the negligence of the Agent.



10. Compliance with Laws

10.1 The Buyer and the Agent shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods or Services.

10.2 The Buyer shall obtain (at the expense of the Buyer) all licenses and approvals that may be required for the Goods or Services.

10.3 The Buyer agrees that the premises will comply with any workplace health and safety laws relating to building or construction sites and any other relevant safety obligations or legislation.

10.4 The Buyer will comply with its obligations under the Health and Safety at Work Act 2015. The Buyer will advise the Agent of any hazards and risks which may be encountered by the Agent or its workers when undertaking the Services. If the Agent or its workers are likely to enter onto the Buyer's premises in performance of the Services the Buyer agrees to notify the Agent of all Health and Safety policies and procedures of the Buyer or other parties also working on the premises.

11. Title

11.1 The Agent and the Buyer agree that ownership of the Goods shall not pass until:

- (a) the Buyer has paid the Agent all amounts owing to the Agent; and
- (b) the Buyer has met all of its other obligations to the Agent.

11.2 Receipt by the Agent 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.

11.3 It is further agreed that until ownership of the Goods passes to the Buyer in accordance with clause 11.1:

- (a) the Buyer is only a bailee of the Goods and must return the Goods to the Agent on request;
- (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand;
- (d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Agent and must sell, dispose of or return the resulting product to the Agent as it so directs;
- (e) the Buyer irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods. The Agent shall not be liable for any damage or loss to the premises which may arise as a result of such entry and recovery of the Goods;
- (f) the Agent may recover possession of any Goods in transit whether or not delivery has occurred;
- (g) the Buyer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Agent; and
- (h) the Agent may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

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

12.1 Upon assenting to these terms and conditions in writing the Buyer 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 Goods or collateral (account - being a monetary obligation of the Buyer to the Agent for Services) that have previously been supplied and that will be supplied in the future by the Agent to the Buyer.

12.2 The Buyer undertakes to:

- (a) sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Agent; and
- (d) where applicable, immediately advise the Agent of 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.

12.3 The Agent and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and



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conditions.

12.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

12.5 Unless otherwise agreed to in writing by the Agent, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

12.6 The Buyer shall unconditionally ratify any actions taken by the Agent under clauses 12.1 to 12.5. .

13. Security and Charge

13.1 In consideration of the Agent agreeing to supply the Goods or Services, the Buyer charges all of its rights, title and interest (whether joint or several) in any assets capable of being charged, owned by the Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

13.2 The Buyer indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and client basis incurred in exercising the Agent's rights under this clause.

13.3 The Buyer irrevocably appoints the Agent and each director of the Agent as the Buyer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Buyer's behalf.

14. Defective Goods on Delivery

14.1 The Buyer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Agent an opportunity to inspect the Goods within a reasonable time following Delivery if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these provisions, the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Buyer is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods with goods either of identical type or similar or repairing the Goods.

14.2 Goods will not be accepted for return other than in accordance with 14.1 above, and provided that:

- (a) the Agent has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Buyer's cost within seven (7) days of the Delivery date; and
- (c) the Agent will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods 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.

15. Warranty

15.1 Subject to the conditions of warranty set out in clause 15.2 and clause 19.2, the Agent warrants that if any defect in the Goods becomes apparent and is reported to the Agent within twelve (12) months of the date of Delivery (time being of the essence) then the Agent will either (at the Agent's sole discretion) replace or remedy the Goods.

15.2 The conditions applicable to the warranty given by clause 15.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by:
 - (i) a person other than an employee or contractor of the Agent performing any work on the Goods;
 - (ii) the Goods being exposed to UV radiation, chemicals, flames or excessive heat or weight, or having hot items placed directly on it;
 - (iii) failure on the part of the Buyer to properly maintain any Goods;
 - (iv) failure on the part of the Buyer to follow any instructions or guidelines provided by the Agent;
 - (v) any use of any Goods otherwise than for any application specified on a quote or order form;
 - (vi) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (vii) fair wear and tear or any accident or act of God.
 - (b) the warranty shall cease and the Agent shall in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled without the Agent's prior written consent.
 - (c) in respect of all claims, the Agent shall not be liable to compensate the Buyer for any delay in either replacing or remedying the Goods, or in properly assessing the Buyer's claim.
- 15.3 In providing the Services, the Agent will exercise a reasonable degree of skill, care and diligence normally expected of a competent professional.



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16. Intellectual Property

16.1 The provision of Goods or Services will not operate so as to transfer or vest in the Buyer any trade mark, patent, copyright or other intellectual property. All intellectual property rights in respect of the Agent and the Goods or Services provided by the Agent remain the Agent's or the applicable manufacturer's property and the Buyer may not use, reverse engineer, interfere with or alter the intellectual property in any way.

16.2 Where the Agent has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Agent. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Agent.

16.3 The Buyer warrants that all designs, specifications or instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.

16.4 The Buyer agrees that the Agent may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Agent has created for the Buyer.

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 the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Buyer owes the Agent any money the Buyer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and client basis, the Agent's collection agency costs, and bank dishonour fees).

17.3 Further to any other rights or remedies the Agent may have under these terms and conditions, if a Buyer has made payment to the Agent, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Agent under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under these terms and conditions.

17.4 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Buyer will be unable to make a payment when it falls due;
- (b) the Buyer has exceeded any applicable credit limit provided by the Agent;
- (c) the Buyer 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

18. Cancellation

18.1 Without prejudice to any other remedies the Agent may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Agent may suspend or terminate the supply of Goods or Services to the Buyer. The Agent will not be liable to the Buyer for any loss or damage the Buyer suffers because the Agent has exercised its rights under this clause.

18.2 The Agent 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 Buyer. On giving such notice the Agent shall repay to the Buyer any money paid by the Buyer for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.3 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).

18.4 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

18.5 Cancellation will not affect any rights of the Agent which accrue up to and including the date of cancellation.



19. Limitation of Liability

19.1 If the Buyer is acquiring Goods or Services for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods or Services by the Agent to the Buyer.

19.2 For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent 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 Goods.

19.3 The liability of the Agent, whether in contract, in tort or otherwise, in respect of all claims for loss, damage, expenses or injury arising under or in connection with these terms and conditions, from any cancellation of these terms and conditions or from any negligence, misrepresentation or other act or omission on the part of the Agent, its representatives, agents or sub-contractors shall not in aggregate exceed the fees payable for the Goods or Services, or \$1,000, whichever is the lesser amount.

19.4 The Agent will not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind arising under or in connection with these terms and conditions or from any cancellation of these terms and conditions or from any negligence, misrepresentation or other act or omission on the part of the Agent, its representatives, agents or sub-contractors.

20. Buyer's Liability and Indemnity

20.1 The Buyer indemnifies the Agent from and against any and all damages, claims, losses, demands, liabilities (including vicarious liability), injuries, suits, actions, judgments, costs and expenses of any kind whatsoever (including, without limitation, legal fees, services costs and costs of recovering unpaid amounts) arising out of or in any way connected with the Buyer's breach of these terms and conditions.

21. Privacy

21.1 If the Buyer or the Guarantor are natural persons, the Buyer or the Guarantor (as applicable) (each an "Individual") irrevocably authorise:

(a) the Agent to collect, retain and use such information about that Individual as the Agent may necessarily require for the purposes of:

(i) carrying out credit checks, (including any overdue fines balance information held by the Ministry of Justice) assessing the Buyer's credit worthiness or responding to any credit enquiry about the Buyer;

(ii) processing, creating and otherwise administering an account, including any application;

(iii) supplying Goods or Services to the Buyer;

(iv) dealing with requests, enquiries or complaints and other customer care related activities and all other general administrative and business purposes;

(v) marketing any products or services to the Buyer and carrying out market and product analysis and research;

(vi) enforcing the Agent's rights under these terms and conditions;

(vii) carrying out any activity in connection with any legal, governmental or regulatory requirements that the Agent is subject to or in connection with legal proceedings, crime or fraud prevention, detection or prosecution; and

(viii) any other purpose as consented to by that Individual in writing from time to time, (collectively referred to as the "Purposes").

(b) any person or entity to provide the Agent such information as the Agent may necessarily require about that Individual for the Purposes;

(c) the Agent to disclose information about that Individual as necessarily required for the Purposes, or as otherwise authorised by that Individual, including to:

(i) third parties who provide products or services related to the Goods or Services that the Agent provides, such as dealers and suppliers;

(ii) credit reference agencies;

(iii) third parties to whom the Agent may be required to disclose information by reason of legal, governmental or regulatory authority or where the Agent believes in good faith that disclosure is necessary to protect or enforce the Agent's rights or the rights, property or safety of others;

(iv) any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer;

(v) trusted third parties to provide services or perform functions on the Agent's behalf; and



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(vi) to any other third party where that Individual has given its express consent for the Agent to do so.

21.2 In addition to clause 21.1, the Agent shall be entitled to collect, use and disclose information about an Individual in accordance with any applicable New Zealand privacy legislation.

21.3 An Individual is entitled to request access to and correction of any such information held about them by the Agent.

21.4 The Agent will maintain reasonable security safeguards to protect an Individual's information and take reasonable steps to ensure that Individual's information is not disclosed to an unauthorised person or entity.

21.5 The Agent will retain an Individual's information for so long as is reasonably necessary to fulfil the Purposes for which it was collected, including for the purposes of satisfying any legal, regulatory, tax or accounting requirements.

21.6 If an Individual fails to provide any information that is reasonably requested by the Agent, that Individual acknowledges that the Agent may not be able to set up an account for the Buyer, or otherwise provide the Goods to the Buyer.

21.7 Any information about an Individual that is collected by the Agent will be held by the Agent. The Agent's address is 320 Rosedale Road, Albany, Auckland 0632, New Zealand.

22. Confidentiality

22.1 Each party agrees 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.

23. Construction Contracts Act 2002

23.1 The Buyer hereby expressly acknowledges that:

(a) the Agent 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 Buyer, and:

(i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Buyer; or

(ii) a scheduled amount stated in a payment schedule issued by the Buyer in relation to the payment claim is not paid in full by the due date for its payment; or

(iii) the Buyer has not complied with an adjudicator's notice that the Buyer must pay an amount to the Agent by a particular date; and

(iv) the Agent has given written notice to the Buyer of its intention to suspend the carrying out of construction work under the construction contract.

(b) if the Agent 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 Buyer or by any person claiming through the Buyer; 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

(v) may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.

(c) if the Agent exercises the right to suspend work, the exercise of that right does not:

(i) affect any rights that would otherwise have been available to the Agent under the Contract and Commercial Law Act 2017; or

(ii) enable the Buyer to exercise any rights that may otherwise have been available to the Buyer under that Act as a direct consequence of the Agent suspending work under this provision.

24. Service of Notices

24.1 Any written notice given under these terms and conditions shall be deemed to have been given and received:

(a) in the case of personal delivery, when delivered;

(b) in the case of a letter, on the seventh working day after posting to the last known address of the recipient; and

(c) in the case of emails, upon delivery to the recipient's last known email address provided that no notification of failed delivery has been received by the sender, provided that any notice given after 5:00pm or on a day which is not a working day shall be deemed to be given at 9:00am on the next working day.



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25. Trusts

25.1 If the Buyer at any time upon or subsequent to entering in to these terms and conditions is acting in the capacity of trustee of any trust ("Trust") then whether or not the Agent may have notice of the Trust, the Buyer covenants with the Agent as follows:

- (a) these terms and conditions extend to all rights of indemnity which the Buyer now or subsequently may have against the Trust and the trust fund;
- (b) the Buyer has full and complete power and authority under the Trust to enter into these terms and conditions and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Buyer against the Trust or the trust fund. The Buyer 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 Buyer will not without consent in writing of the Agent (the Agent will not unreasonably withhold consent), cause, permit, or suffer to happen the removal, replacement or retirement of the Buyer as trustee of the Trust.

26. General

26.1 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 arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

26.2 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.

26.3 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.

26.4 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 Courts in New Zealand.

26.5 The Agent may licence or assign all or any part of its rights or obligations under these terms and conditions without the Buyer's consent.

26.6 The Buyer cannot licence or assign without the written approval of the Agent.

26.7 The Agent may elect to subcontract out any part of the provision of Goods or Services but shall not be relieved from any liability or obligation under these terms and conditions by so doing. Furthermore, the Buyer agrees and understands that they have no authority to give any instruction to any of the Agent's sub-contractors without the authority of the Agent.

26.8 The Buyer agrees that the Agent may amend these terms and conditions by notifying the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Agent to provide Goods or Services to the Buyer.

26.9 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.

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