

Terrazzo & Stoneworks NZ Limited – Terms & Conditions of Trade

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 “TSL” means Terrazzo & Stoneworks NZ Limited T/A Terrazzo & Stoneworks, its successors and assigns or any person acting on behalf of and with the authority of Terrazzo & Stoneworks NZ Limited T/A Terrazzo & Stoneworks .

1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TSL to provide the Services 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 “Goods” means all Goods or Services supplied by TSL to the Client at the Client's request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).

1.5 “Intended Use” means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.

1.6 “Non-Conforming Building Product” means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:(a) the product is not, or will not be, safe; or(b) does not, or will not, comply with the relevant regulatory provisions; or (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.

1.7 “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.

1.8 “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 Goods via the website.

1.9 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) in New Zealand Dollars for the Goods as agreed between TSL and the Client in accordance with clause 5 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 the Goods.

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 Goods on credit shall not take effect until the Client has completed a credit application with TSL and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, TSL 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.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that TSL 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 TSL 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 TSL in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of TSL; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Client shall give TSL 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by TSL as a result of the Client's failure to comply with this clause.

5. Price and Payment

5.1 At TSL's sole discretion the Price shall be either:(a) as indicated on any invoice provided by TSL to the Client; or(b) TSL's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 TSL reserves the right to change the Price:(a) if a variation to the Goods which are to be supplied is requested; or(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or(c) in the event of increases to TSL in the cost of Goods, 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 and labour) which are beyond TSL's control.

5.3 Variations will be charged for on the basis of TSL's quotation, and will be detailed in writing, and shown as variations on TSL's invoice. The Client shall be required to respond to any variation submitted by TSL within ten (10) working days. Failure to do so will entitle TSL 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.

5.4 At TSL's sole discretion a non-refundable deposit may be required.

5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by TSL, which may be:

(a) on or before delivery of the Goods;(b) by way of instalments/progress payments in accordance with TSL's payment schedule;(c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;(d) the twentieth (20th) day of the month, following the month in which the Goods (including but not limited to delivery of Goods by way of instalment) were delivered; or (e) the date specified on any invoice or other form as being the date for payment; or(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TSL.

5.6 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 Services during which time all Services 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.

5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and TSL.

5.8 TSL may in its discretion allocate any payment received from the Client towards any invoice that TSL determines and may do so at the time of receipt or at any time afterwards. On any default by the Client TSL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TSL, payment will be deemed to be allocated in such manner as preserves the maximum value of TSL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

5.9 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 TSL nor to 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 Client must pay to TSL an amount equal to any GST TSL must pay for any supply by TSL under this or any other contract for the sale of the Goods. 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. Delivery of Goods

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

(a) the Client or the Client's nominated carrier takes possession of the Goods at TSL's address; or
(b) TSL (or TSL's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

6.2 At TSL's sole discretion the cost of Delivery is in addition to the Price.

6.3 TSL 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.

6.4 If the Client instructs TSL to use a particular method of carriage, TSL will give priority to the method designated but if that method cannot conveniently be adopted by TSL the Client shall be deemed to authorise TSL to carry or have the Goods carried by another method(s).

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

7. Risk

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

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

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

7.4 Where TSL gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the site for the laying of concrete slabs, foundations or similar services and such advice or recommendations are not acted upon then TSL shall require the Client or their agent to authorise commencement of the Services in writing. TSL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

7.5 Detailed drawings of any services that will be embedded in the concrete are to be provided to TSL prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by TSL for damage to the Services or any other element embedded in the concrete.

7.6 The Client acknowledges and accepts that:

(a) variations of colour and texture are inherent in concrete. TSL shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product; and (b) concrete is a porous material and as a consequence TSL cannot be held responsible for holes and pinholes, however numerous, that appear on the surface after completion of the Services; and

(c) Goods supplied may:

(i) expand, contract or distort as a result of exposure to heat, cold, weather; or (ii) mark or stain if exposed to certain substances; or (iii) be damaged or disfigured by impact or scratching.

7.7 TSL shall not be liable for:

(a) any defect or damage resulting from incorrect or faulty installation of the Goods by any third party; or (b) for any defect in the Goods if the Client does not follow TSL recommendations.

7.8 It is the Client's responsibility to warrant that the structure of the premises or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation incidental thereto and TSL shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation; and

8. Dimensions, Plans and Specifications

8.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless the Client and TSL agree otherwise in writing.

8.2 TSL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.

8.3 If the giving of an estimate or quotation for the supply of Goods involves TSL estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of TSL's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.

8.4 Should the Client require any changes to TSL's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

9. Goods, Documents and Services Supplied by the Client

9.1 The Client:

(a) warrants that any documentation supplied for the Services and the content or methods therein are accurate and/or suitable to be used for the purpose for which the document/s were created;(b) agrees that it is reasonable for TSL to rely on the documentation;(c) agrees to supply TSL with as many copies of the documentation as TSL may reasonably need to perform the Services or to obtain any necessary approvals required for the Services.

9.2 The Client agrees that all materials and works supplied by the Client or the Client's third-party sub-contractors will:

(a) be performed or supplied in accordance with all legislative requirements (including, but not limited to and WorkSafe guidelines etc); (b) be suitable for their inclusion into the Services;(c) be completed to TSL's requirements.

9.3 TSL may, where TSL believes that any materials or works supplied by the Client or any third party employed by the Client are defective, require that the defective materials be replaced or require such works as are considered defective to be removed, repaired or replaced, the costs of which shall be the Client's responsibility.

9.4 Notwithstanding clause 9.3 TSL shall have no liability whatsoever in terms of the performance of, or suitability of, any materials or works supplied by either the Client or any third party employee of the Client.

9.5 In the event that the Client undertakes or employs any third party to undertake any works at the site whilst TSL is undertaking Services then the Client must ensure that the Client and/or any third party so employed:

(a) is appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by TSL;(b) does not interfere with the progress of Services by TSL;(c) holds all relevant insurances as TSL is required to hold or as are otherwise required under this Contract;(d) co-operates with all requests or directives of TSL in relation to the timeliness and co-ordination of works to be performed; (e) co-operates as may be reasonably expected with all other persons on the site;(f) discusses any site issues directly with TSL and not with any of TSL's employees.

9.6 In the event that the Client or the Client's third party employees do not comply with clauses 9.3 or 9.5 then TSL may require the non-compliant party to either leave and/or stay off the site as TSL may so direct.

9.7 If the Client breaches this clause then TSL may (at TSL's sole discretion) either:

(a) carry on the Services without incorporation of any Client supplied materials or works; (b) suspend the carrying out of the Services as per clause 23;(c) terminate this Contract in accordance with clause 20.

10. Access

10.1 The Client shall ensure that TSL has clear and free access to effect delivery of the Goods. TSL shall not be liable for any loss or damage to the Client's premises (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of TSL.

11. Compliance and Consents

11.1 The Client and TSL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.

11.2 Both parties acknowledge and agree to comply with section 14G (Responsibilities of product manufacturer or supplier) of the Building Amendment Act 2013, in respect of all building products to be supplied during the course of the Services.

11.3 Where the Client has supplied products for TSL to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those products. However, if in TSL's opinion, it is believed that the products supplied will not conform to regulations, then TSL shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 5.2.

11.4 The Client shall be responsible for:

(a) obtaining and paying for any necessary consent, approvals or certificates required for the Services, including those required subsequent to commencement of the Services; and(b) applying for and obtaining the Code Compliance Certificate(s) for the Services.

11.5 TSL shall:

(a) comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Services; and(b) provide the Client with all necessary information relating to the Services so that the Client may apply for a Code Compliance Certificate.

12. Title

12.1 TSL and the Client agree that ownership of the Goods shall not pass until:

(a) the Client has paid TSL all amounts owing to TSL; and(b) the Client has met all of its other obligations to TSL.

12.2 Receipt by TSL 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.

12.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 12.1:

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

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

13.1 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 Goods and/or collateral (account) – being a monetary obligation of the Client to TSL for Services – that have previously been supplied and that will be supplied in the future by TSL to the Client.

13.2 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 TSL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;(b) indemnify, and upon demand reimburse, TSL 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 and/or collateral (account) in favour of a third party without the prior written consent of TSL; and(d) immediately advise TSL 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.

13.3 TSL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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

13.5 Unless otherwise agreed to in writing by TSL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

13.6 The Client shall unconditionally ratify any actions taken by TSL under clauses 13.1 to 13.5.

13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

14.1 In consideration of TSL agreeing to supply the Goods, 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).

14.2 The Client indemnifies TSL from and against all TSL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TSL's rights under this clause.

14.3 The Client irrevocably appoints TSL and each director of TSL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Defects

15.1 The Client shall inspect the Goods on Delivery and shall within forty-eight (48) hours of delivery (time being of the essence) notify TSL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford TSL an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which TSL has agreed in writing that the Client is entitled to reject, TSL's liability is limited to either (at TSL's discretion) replacing the Goods or repairing the Goods.

15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:

(a) TSL has agreed in writing to accept the return of the Goods; and(b) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and(c) TSL 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.

15.3 Subject to clause 15.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

16. Warranty

16.1 Subject to the conditions of warranty set out in clause 16.2 TSL warrants that if any defect in any workmanship of TSL becomes apparent and is reported to TSL within twelve (12) months of the date of Delivery (time being of the essence) then TSL will either (at TSL's sole discretion) replace or remedy the workmanship.

16.2 The conditions applicable to the warranty given by clause 16.1 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 Goods; or(ii) failure on the part of the Client to follow any instructions or guidelines provided by TSL; or(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and TSL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without TSL's consent.

(c) in respect of all claims TSL 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.

16.3 For Goods not manufactured by TSL, the warranty shall be the current warranty provided by the manufacturer of the Goods. TSL 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.

17. Consumer Guarantees Act 1993

17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by TSL to the Client.

18. Intellectual Property

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

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

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

19. Default and Consequences of Default

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

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

19.3 Further to any other rights or remedies TSL may have under this Contract, if a Client has made payment to TSL, 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 TSL under this clause 19 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.

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

(a) any money payable to TSL becomes overdue, or in TSL'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 TSL;(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

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

20.2 TSL may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice TSL shall repay to the Client any money paid by the Client for the Goods. TSL shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

20.4 Cancellation of orders for Goods 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.

21. Dispute Resolution

21.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

22. Privacy Policy

22.1 All emails, documents, images or other recorded information held or used by TSL is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. TSL 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"). TSL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by TSL that may result in serious harm to the Client, TSL 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.

22.2 Notwithstanding clause 22.1, privacy limitations will extend to TSL in respect of Cookies where transactions for purchases/orders transpire directly from TSL's website. TSL 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 TSL when TSL sends an email to the Client, so TSL 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 TSL's website.

22.3 The Client authorises TSL or TSL'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 TSL from the Client directly or obtained by TSL 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.

22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.

22.5 The Client shall have the right to request TSL for a copy of the Personal Information about the Client retained by TSL and the right to request TSL to correct any incorrect Personal Information about the Client held by TSL.

23. Suspension of Services

23.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:

(a) TSL 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 5.2 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 TSL by a particular date; and(iv) TSL has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.

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

(i) affect any rights that would otherwise have been available to TSL 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 TSL suspending work under this provision;

(d) due to any act or omission by the Client, the Client effectively precludes TSL from continuing the Services or performing or complying with TSL's obligations under this Contract, then without prejudice to TSL's other rights and remedies, TSL may suspend the Services 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 Services is based. All costs and expenses incurred by TSL as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

23.2 If pursuant to any right conferred by this Contract, TSL suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, TSL shall be entitled to terminate the Contract, in accordance with clause 20.

24. Service of Notices

24.1 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.

24.2 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.

25. Trusts

25.1 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 TSL may have notice of the Trust, the Client covenants with TSL 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 TSL (TSL 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.

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, 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).

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. 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.

26.3 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 courts of Auckland, New Zealand.

26.4 TSL 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 TSL of these terms and conditions (alternatively TSL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

26.5 TSL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

26.6 The Client cannot licence or assign without the written approval of TSL.

26.7 TSL may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of TSL's sub-contractors without the authority of TSL.

26.8 The Client agrees that TSL 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 TSL to provide Goods to the Client.

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 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.