
Waimak Engineering 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 **“Waimak Engineering”** means Waimak Engineering Limited, its successors and assigns or any person acting on behalf of and with the authority of Waimak Engineering Limited.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Waimak Engineering to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Goods”** means all Goods or Services supplied by Waimak Engineering to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Worksite”** means the address nominated by the Customer to which the Goods/Services are to be supplied by Waimak Engineering.
- 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 Customer does not wish to allow Cookies to operate in the background when using Waimak Engineering’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.8 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Waimak Engineering and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer 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 Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Waimak Engineering and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Waimak Engineering reserves the right to refuse Delivery.
- 2.6 Where Waimak Engineering gives any advice, recommendation, information, assistance or service provided by Waimak Engineering in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer’s agent and is based on Waimak Engineering’s own knowledge and experience and shall be accepted without liability on the part of Waimak Engineering. Where such advice or recommendations are not acted upon then Waimak Engineering shall require the Customer or their agent to authorise commencement of the Services in writing. Waimak Engineering shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Waimak Engineering 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 Waimak Engineering 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 Waimak Engineering 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 Waimak Engineering; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At Waimak Engineering’s sole discretion the Price shall be either:
(a) as indicated on any invoice provided by Waimak Engineering to the Customer; or
(b) Waimak Engineering’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 Waimak Engineering reserves the right to change the Price:

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- (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) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services;
 - (d) as a result of fluctuations in currency exchange rates, or in the dollar value of metal prices or in the event of increases to Waimak Engineering in the cost of labour or materials which are beyond Waimak Engineering's control.
- 5.3 Variations will be charged for on the basis of Waimak Engineering's quotation, and will be detailed in writing, and shown as variations on Waimak Engineering's invoice. The Customer shall be required to respond to any variation submitted by Waimak Engineering within ten (10) working days. Failure to do so will entitle Waimak Engineering 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 Waimak Engineering'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 Customer on the date/s determined by Waimak Engineering, which may be:
- (a) on or before Delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Waimak Engineering's payment schedule;
 - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer'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 Customer by Waimak Engineering.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Waimak Engineering.
- 5.7 Waimak Engineering may in its discretion allocate any payment received from the Customer towards any invoice that Waimak Engineering determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Waimak Engineering may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Waimak Engineering, payment will be deemed to be allocated in such manner as preserves the maximum value of Waimak Engineering's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer 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 Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015.
- 5.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Waimak Engineering nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Waimak Engineering is a claim made under the Construction Contracts Act 2002.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Waimak Engineering an amount equal to any GST Waimak Engineering must pay for any supply by Waimak Engineering under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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. **Provision of the Services**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Waimak Engineering's address; or
 - (b) Waimak Engineering (or Waimak Engineering's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Waimak Engineering's sole discretion The cost of Delivery is included in the Price.
- 6.3 Subject to clause 6.4 it is Waimak Engineering's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.4 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Waimak Engineering claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Waimak Engineering's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Services; or
 - (c) notify Waimak Engineering that the Worksite is ready.
- 6.5 Waimak Engineering 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.
- 6.6 Any time specified by Waimak Engineering for Delivery of the Goods is an estimate only and Waimak Engineering will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Waimak Engineering is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Waimak Engineering shall be entitled to charge a reasonable fee for redelivery and/or storage

7. Dimensions, Plans and Specifications

- 7.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Services, unless Waimak Engineering and the Customer agree otherwise in writing.
- 7.2 Where the Customer is to supply Waimak Engineering with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. Waimak Engineering shall not be liable whatsoever for any errors in the Services that are caused by incorrect or inaccurate data being supplied by the Customer.
- 7.3 In the event the Customer gives information relating to measurements and quantities of Goods required in completing the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Waimak Engineering places an order based on these measurements and quantities. Waimak Engineering accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Waimak Engineering is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Waimak Engineering is sufficient evidence of Waimak Engineering's rights to receive the insurance proceeds without the need for any person dealing with Waimak Engineering to make further enquiries.
- 8.3 If the Customer requests Waimak Engineering to leave Goods outside Waimak Engineering's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 Where Waimak Engineering is:
- (a) to both supply and install Goods then Waimak Engineering shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer; and
 - (b) required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Waimak Engineering shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.5 The Customer acknowledges and accepts that:
- (a) Waimak Engineering is only responsible for parts that are replaced by Waimak Engineering and that in the event that other parts/materials, subsequently fail, the Customer agrees to indemnify Waimak Engineering against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
 - (b) stainless steel is a textured material and can be of a porous nature. The Customer accepts that products made from this material can rust and mark easily. The Customer accepts that care should be taken to maintain the finish of and longevity of stainless steel products;
 - (c) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods;
 - (d) Goods supplied may exhibit variations in shade, colour, texture, surface, finish, markings, veinings, and may contain natural fissures, occlusions, lines, indentations; and may
 - (i) fade or change colour over time.
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.

Whilst Waimak Engineering will make every effort to match sales samples to the finished Goods, Waimak Engineering accepts no liability whatsoever where such samples differ to the finished Goods supplied.

9. Worksite Access and Condition

- 9.1 It is the intention of Waimak Engineering and agreed by the Customer that:
- (a) the Customer shall ensure that Waimak Engineering has clear and free access to the Worksite at all times to enable them to undertake the Services (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). Waimak Engineering shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Waimak Engineering; and
 - (b) it is the Customer's responsibility to provide Waimak Engineering, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 9.2 The Customer agrees to be present at the Worksite when and as reasonably requested by Waimak Engineering and its employees, contractors and/or agents.
- 9.3 *Worksite Inductions*
- (a) in the event the Customer requires an employee or sub-contractor of Waimak Engineering to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay Waimak Engineering's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where Waimak Engineering is in control of the Worksite, the Customer and/or the Customer's third party contractors must initially carry out Waimak Engineering's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Services will be by **appointment only** and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by Waimak Engineering.

10. Compliance with Laws

- 10.1 The Customer and Waimak Engineering shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 10.2 Both parties acknowledge and agree:
- (c) to comply with the Building Amendment Act 2013, in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (d) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 10.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 10.4 Waimak Engineering shall 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.
- 10.5 Notwithstanding clause 10.1 and pursuant to the Health & Safety at Work Act 2015 (the “HSW Act”), Waimak Engineering agrees at all times to 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 Servicesite or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.

11. Title

- 11.1 Waimak Engineering and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Waimak Engineering all amounts owing to Waimak Engineering ; and
 - (b) the Customer has met all of its other obligations to Waimak Engineering.
- 11.2 Receipt by Waimak Engineering 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 Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Waimak Engineering on request;
 - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for Waimak Engineering and must pay to Waimak Engineering the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Waimak Engineering and must pay or deliver the proceeds to Waimak Engineering on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Waimak Engineering and must sell, dispose of or return the resulting product to Waimak Engineering as it so directs;
 - (e) the Customer irrevocably authorises Waimak Engineering to enter any premises where Waimak Engineering believes the Goods are kept and recover possession of the Goods;
 - (f) Waimak Engineering may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer 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 Waimak Engineering ; and
 - (h) Waimak Engineering may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. Personal Property Securities Act 1999 (“PPSA”)

- 12.1 Upon assenting to these terms and conditions in writing the Customer 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 Customer to Waimak Engineering for Services – that have previously been supplied and that will be supplied in the future by Waimak Engineering to the Customer .
- 12.2 The Customer 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 Waimak Engineering may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Waimak Engineering 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 Waimak Engineering ; and
 - (d) immediately advise Waimak Engineering 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 Waimak Engineering and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Waimak Engineering, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer shall unconditionally ratify any actions taken by Waimak Engineering under clauses 12.1 to 12.5.

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- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of Waimak Engineering agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies Waimak Engineering from and against all Waimak Engineering's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Waimak Engineering's rights under this clause.
- 13.3 The Customer irrevocably appoints Waimak Engineering and each director of Waimak Engineering as the Customer'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 Customer's behalf.
- 14. Defects**
- 14.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Waimak Engineering of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Waimak Engineering an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Waimak Engineering has agreed in writing that the Customer is entitled to reject, Waimak Engineering's liability is limited to either (at Waimak Engineering's discretion) replacing the Goods 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) Waimak Engineering has agreed in writing to accept the return of the Goods;
 - (b) the Goods are returned at the Customer's cost within fourteen (14) days of the Delivery date;
 - (c) Waimak Engineering 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.
- 14.3 Waimak Engineering will not accept the return of Goods for credit.
- 14.4 Subject to clause 14.1, non - defective items or Goods made to the Customer's specifications are not acceptable for credit or return.
- 15. Warranty**
- 15.1 Subject to the conditions of warranty set out in clause 15.2 Waimak Engineering warrants that if any defect in any workmanship of Waimak Engineering becomes apparent and is reported to Waimak Engineering within twelve (12) months of the date of Delivery (time being of the essence) then Waimak Engineering will either (at Waimak Engineering's sole discretion) replace or remedy the workmanship.
- 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 or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Waimak Engineering ; 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 Waimak Engineering shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Waimak Engineering's consent.
 - (c) in respect of all claims Waimak Engineering shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.3 For Goods not manufactured by Waimak Engineering, the warranty shall be the current warranty provided by the manufacturer of the Goods. Waimak Engineering 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.
- 16. Consumer Guarantees Act 1993**
- 16.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Waimak Engineering to the Customer.
- 17. Intellectual Property**
- 17.1 Where Waimak Engineering has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Waimak Engineering. Under no circumstances may such designs, drawings and documents be used without the express written approval of Waimak Engineering.
- 17.2 The Customer warrants that all designs, specifications or instructions given to Waimak Engineering will not cause Waimak Engineering to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Waimak Engineering against any action taken by a third party against Waimak Engineering in respect of any such infringement.
- 17.3 The Customer agrees that Waimak Engineering may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Waimak Engineering has created for the Customer .

18. Default and Consequences of Default

- 18.1 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 Waimak Engineering's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Waimak Engineering any money the Customer shall indemnify Waimak Engineering from and against all costs and disbursements incurred by Waimak Engineering in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Waimak Engineering's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Waimak Engineering may have under this Contract, if a Customer has made payment to Waimak Engineering, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Waimak Engineering under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 18.4 Without prejudice to Waimak Engineering's other remedies at law Waimak Engineering shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Waimak Engineering shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Waimak Engineering becomes overdue, or in Waimak Engineering's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Waimak Engineering;
 - (c) the Customer 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 Customer or any asset of the Customer.

19. Cancellation

- 19.1 Without prejudice to any other remedies Waimak Engineering may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Waimak Engineering may suspend or terminate the supply of Goods to the Customer. Waimak Engineering will not be liable to the Customer for any loss or damage the Customer suffers because Waimak Engineering has exercised its rights under this clause.
- 19.2 Waimak Engineering 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 Customer. On giving such notice Waimak Engineering shall repay to the Customer any money paid by the Customer for the Goods. Waimak Engineering shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Waimak Engineering as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed, or a design has been finalized.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by Waimak Engineering is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. Waimak Engineering 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" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Waimak Engineering acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Waimak Engineering that may result in serious harm to the Customer, Waimak Engineering will notify the Customer 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 Customer by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Waimak Engineering in respect of Cookies where the Customer utilises Waimak Engineering's website to make enquiries. Waimak Engineering 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Waimak Engineering when Waimak Engineering sends an email to the Customer, so Waimak Engineering may collect and review that information ("collectively Personal Information")
- If the Customer consents to Waimak Engineering's use of Cookies on Waimak Engineering's website and later wishes to withdraw that consent, the Customer may manage and control Waimak Engineering's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Customer authorises Waimak Engineering or Waimak Engineering's agent to:
- (a) access, collect, retain and use any information about the Customer;

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- (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 Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Waimak Engineering from the Customer directly or obtained by Waimak Engineering 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 Customer.
- 20.4 Where the Customer is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.5 The Customer shall have the right to request (by e-mail) from Waimak Engineering, a copy of the Personal Information about the Customer retained by Waimak Engineering and the right to request that Waimak Engineering correct any incorrect Personal Information.
- 20.6 Waimak Engineering will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.7 The Customer can make a privacy complaint by contacting Waimak Engineering via e-mail. Waimak Engineering will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

21. Suspension of Services

- 21.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Customer hereby expressly acknowledges that:
- (a) Waimak Engineering 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 Customer, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 5.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Waimak Engineering by a particular date; and
 - (iv) Waimak Engineering has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Waimak Engineering 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 Customer or by any person claiming through the Customer; 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 Waimak Engineering exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Waimak Engineering under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Waimak Engineering suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes Waimak Engineering from continuing the Services or performing or complying with Waimak Engineering's obligations under this Contract, then without prejudice to Waimak Engineering's other rights and remedies, Waimak Engineering may suspend the Services immediately after serving on the Customer 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 Waimak Engineering as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 21.2 If pursuant to any right conferred by this Contract, Waimak Engineering suspends the Services and the default that led to that suspension continues un-remedied subject to clause 19.1 for at least ten (10) working days, Waimak Engineering shall be entitled to terminate the Contract, in accordance with clause 19.

22. Service of Notices

- 22.1 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.
- 22.2 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.

23. Trusts

- 23.1 If the Customer 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 Waimak Engineering may have notice of the Trust, the Customer covenants with Waimak Engineering as follows:

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- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Waimak Engineering (Waimak Engineering will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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.

24. General

- 24.1 All disputes and differences between the Customer and Waimak Engineering touching and concerning this Contract shall be referred to arbitration 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.
- 24.2 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.
- 24.3 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 Christchurch, New Zealand.
- 24.4 Except to the extent permitted by law "CGA", Waimak Engineering shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Waimak Engineering of these terms and conditions (alternatively Waimak Engineering's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.5 Waimak Engineering may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 24.6 The Customer cannot licence or assign without the written approval of Waimak Engineering.
- 24.7 Waimak Engineering 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 Customer agrees and understands that they have no authority to give any instruction to any of Waimak Engineering's sub-contractors without the authority of Waimak Engineering.
- 24.8 The Customer agrees that Waimak Engineering may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Waimak Engineering to provide Goods to the Customer.
- 24.9 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.
- 24.10 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.