

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 **"TRT"** means TRT 2019 Limited T/A TRT Builders, its successors and assigns or any person acting on behalf of and with the authority of TRT 2019 Limited T/A TRT Builders.
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting TRT to provide the Works 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 **"Works"** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by TRT to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.5 **"Worksite"** means the address nominated by the Customer to which the Materials are to be supplied by TRT.
- 1.6 **"Intended Use"** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.7 **"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.
- 1.8 **"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, Customer 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.
- 1.9 **"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 Customer and website, and can be accessed either by the web server or the Customer's computer. **If the Customer does not wish to allow Cookies to operate in the background when using TRT'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.**
- 1.10 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between TRT and the Customer in accordance with clause 6 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 any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Works on credit shall not take effect until the Customer has completed a credit application with TRT and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, TRT reserves the right to refuse delivery.
- 2.6 Where TRT gives any advice, recommendation, information, assistance or service provided by TRT in relation to Works supplied is given in good faith to the Customer or the Customer's agent and is based on TRT's own knowledge and experience and shall be accepted without liability on the part of TRT. Where such advice or recommendations is not acted upon then TRT shall require the Customer or their agent to authorise commencement of the Works in writing. TRT shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 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. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to TRT as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Materials or Works on the Customer's behalf and/or to request any variation to the Works on the Customer's behalf (such authority to continue until all requested Works have been completed or the Customer otherwise notifies TRT in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise TRT in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to TRT for all additional costs incurred by TRT (including TRT's profit margin) in providing any Works, Materials or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that TRT 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 TRT 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 TRT in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of TRT; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

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

6. Price and Payment

- 6.1 At TRT's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by TRT to the Customer in respect of Works performed or Materials supplied; or
 - (b) TRT's quoted Price (subject to clause 6.2) which shall be binding upon TRT provided that the Customer shall accept TRT's quotation in writing within thirty (30) days.
- 6.2 TRT reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements provided by the Customer, safety considerations (discovery of asbestos or other toxic substances or the discovery of termites or rotting, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to TRT in the cost of labour or materials which are beyond TRT's control.
- 6.3 Variations will be charged for on the basis of TRT's quotation, and will be detailed in writing, and shown as variations on TRT's invoice. The Customer shall be required to respond to any variation submitted by TRT within ten (10) working days. Failure to do so will entitle TRT to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At TRT's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by TRT, which may be:
- (a) on completion of the Works; or
 - (b) on or before delivery of the Materials;
 - (c) by way of progress payments in accordance with TRT's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed;
 - (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 TRT.
- 6.6 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 Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and TRT.
- 6.8 TRT may in its discretion allocate any payment received from the Customer towards any invoice that TRT determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer TRT may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TRT, payment will be deemed to be allocated in such manner as preserves the maximum value of TRT's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 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 TRT nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by TRT is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to TRT an amount equal to any GST TRT must pay for any supply by TRT under this or any other agreement for the sale of the Materials. 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.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is TRT's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that TRT claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond TRT'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 Works; or
- (c) notify TRT that the Worksite is ready.
- 7.3 At TRT's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 TRT may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by TRT for delivery of the Works is an estimate only and TRT 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 Works to be supplied at the time and place as was arranged between both parties. In the event that TRT is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then TRT shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8. Worksite Access and Condition**
- 8.1 TRT is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by TRT will be placed in a designated areas appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
- 8.2 It is the intention of TRT and agreed by the Customer that:
 - (a) the Customer shall ensure that TRT has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). TRT 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 TRT;
 - (b) it is the Customer's responsibility to provide TRT, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - (c) the Customer shall contact adjoining neighbours and gain their permission to remove any walls or fences on boundaries and unless otherwise agreed, it shall be the Customer's responsibility to organise either temporary fencing and/or security guards to secure the Worksite during the performance of the Works by TRT and shall be liable for all costs associated in taking all reasonable precautions to protect against destruction or damage by way of vandalism or theft. Failure to comply with this clause 8.2(c) in the event that the Worksite is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Customer.
- 8.3 The Customer agrees to be present at the Worksite when and as reasonably requested by TRT and its employees, contractors and/or agents.
- 8.4 *Worksite Inductions*
 - (a) in the event the Customer requires an employee or sub-contractor of TRT 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 TRT's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where TRT is in control of the Worksite, the Customer and/or the Customer's third party contractors must initially carry out TRT's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works 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 TRT.
- 9. Risk**
- 9.1 If TRT retains ownership of the Materials under clause 14 then:
 - (a) where TRT is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at TRT's address; or
 - (ii) the Materials are delivered by TRT or TRT's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - (b) where TRT is to both supply and install Materials then TRT shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 9.2 Notwithstanding the provisions of clause 9.1 if the Customer specifically requests TRT to leave Materials outside TRT's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 9.3 The Customer warrants that any part of the Worksite where structures are to be installed will be of sound substructure that is able to withstand such installation. If for any reason (including the discovery of latent or unfavourable conditions such as liquefaction residue or rotten timber risk) that TRT, or employees of TRT, reasonably form the opinion that the Customer's Worksite is not suitable for the installation of Materials to proceed then TRT shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2. above) until TRT is satisfied that it is safe for the installation to proceed. Where consultation with engineers or other appropriate third parties, all associated costs shall be borne by the Customer.
- 9.4 All potential waterproofing surfaces are subject to an inspection by TRT prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then TRT reserves the right to halt the Works until such time as it is agreed between TRT and the Customer as to the additional cost in further preparation of the surface in order to make it fit for waterproofing. The additional cost shall be charged as a variation to the quotation as per clause 6.2.
- 9.5 The Customer acknowledges that:
 - (a) TRT is only responsible for parts that are replaced by TRT and that in the event that other parts subsequently fail, the Customer agrees to indemnify TRT against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and

- (b) the polish finish of the Materials may be affected by environmental factors (including, but not limited to, humidity, weather, extreme heat etc.). Although TRT will employ all possible measures to obtain a high quality finish, TRT shall not be liable for any change in finish which is due to environmental factors; and
- (c) that TRT accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Customer's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks; and
- (d) that it is the Customer's responsibility to ensure that any uncompleted areas are kept watertight during construction if there is any delay in the Works due to circumstances beyond the control of TRT (including, but not limited to, waiting on another trade, materials, or weather conditions). TRT will accept no liability whatsoever for any damages caused as a result of the Customer's failure to comply with this clause; and
- (e) that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Accordingly the Customer agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation hereto.
- 9.6 Timber is a hygroscopic material subject to expansion and contraction; therefore, TRT will accept no responsibility for gaps that may appear during prolonged dry periods.
- 9.7 Whilst TRT will take all due care to avoid contamination of the finished surface, TRT accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the Worksite.
- 9.8 Detailed drawings of any services that will be embedded in the concrete are to be provided to TRT prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by TRT for damage to the services or any other element embedded in the concrete.
- 9.9 TRT gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Works such as:
 - (a) hairline cracking of paving and grout; or
 - (b) damage caused by contact with chemicals, solvents, oils or any other substances; or
 - (c) the effects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 9.10 TRT shall not be liable for:
 - (a) any defect in the Works if the Customer does not follow TRT's recommendations, including:
 - (i) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
 - (ii) that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days; and
 - (iii) that no heavy items (including but not limited to, pots, furniture etc) is placed on the concrete area for a minimum of twenty-four (24) hours; or
 - (b) for any defect or damage resulting from incorrect or faulty installation carried out by any other third party; or
 - (c) for any loss or damage to the Works that is caused by any other tradesmen after the completion of the Works.
- 9.11 The Customer accepts that:
 - (a) variations of colour and texture are inherent in concrete. TRT 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;
 - (b) concrete is a porous material and as a consequence TRT cannot be held responsible for holes and pinholes, however numerous, that appear on the surface after completion of the Works;
 - (c) TRT can only visually check the concrete and cannot guarantee the mix is free of foreign objects. If the concrete is divided into more than one truck TRT cannot guarantee the texture is consistent between trucks.
- 9.12 Materials supplied may:
 - (a) exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst TRT will make every effort to match sales samples to the finished Materials TRT accepts no liability whatsoever where such samples differ to the finished Materials supplied; and
 - (b) fade or change colour over time; and
 - (c) expand, contract, distort, bow, cup, or twist as a result of the size of the panels and/or exposure to heat, cold, weather; and
 - (d) mark or stain if exposed to certain substances; and
 - (e) be damaged or disfigured by impact or scratching.
- 10. Dimensions, Plans and Specifications**
- 10.1 All customary building tolerances shall apply to the dimensions and measurements of the Materials unless TRT and the Customer agree otherwise in writing.
- 10.2 In the event the Customer gives information relating to the Materials (including plans, specifications, CAD drawings, measurements, quantities, and other information provided by the Customer):
 - (a) that it is the Customer's responsibility to verify the accuracy of the information before the Customer or TRT places an order based on the information. TRT accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause; and
 - (b) TRT shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, TRT accepts no responsibility for any loss, damages, or costs however resulting therefrom, including any variation to the Materials required due to inaccurate plans provided by the Customer, such additional Works shall be charged in accordance with clause 6.2.
- 10.3 If the giving of an estimate or quotation for the supply of Materials involves TRT estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of TRT estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
- 10.4 Should the Customer require any changes to TRT estimated measurements and quantities, the Customer 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.

11. Insurance

- 11.1 TRT shall have public liability insurance of at least \$5m. It is the Customer's responsibility to ensure that they are similarly insured.

12. Underground Locations

- 12.1 Prior to TRT commencing any work the Customer must advise TRT of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 12.2 Whilst TRT will take all care to avoid damage to any underground services the Customer agrees to indemnify TRT in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Compliance with Laws

- 13.1 The Customer and TRT shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the Building Amendment Act 2013, in respect of all workmanship and building products to be supplied during the course of the Works; and
- (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Customer has supplied products for TRT to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and are for their Intended Use and any faults inherent in those products. However, if in TRT's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then TRT shall be entitled, without prejudice, to halt the Works 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 6.2.
- 13.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 13.5 TRT 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 Works.
- 13.6 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), TRT 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 Worksite or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.

14. Title

- 14.1 TRT and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid TRT all amounts owing to TRT; and
- (b) the Customer has met all of its other obligations to TRT.
- 14.2 Receipt by TRT 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.
- 14.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 14.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to TRT on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for TRT and must pay to TRT the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
- (c) the production of these terms and conditions by TRT shall be sufficient evidence of TRT's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with TRT to make further enquiries;
- (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for TRT and must pay or deliver the proceeds to TRT on demand;
- (e) the Customer should not convert or process the Materials 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 TRT and must sell, dispose of or return the resulting product to TRT as it so directs;
- (f) unless the Materials have become fixtures the Customer irrevocably authorises TRT to enter any premises where TRT believes the Materials are kept and recover possession of the Materials;
- (g) TRT may recover possession of any Materials in transit whether or not delivery has occurred;
- (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of TRT; and
- (i) TRT may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

- 15.1 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 Materials and/or collateral (account) – being a monetary obligation of the Customer to TRT for Works – that have previously been supplied and that will be supplied in the future by TRT to the Customer.
- 15.2 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 TRT may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, TRT for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of TRT; and
 - (d) immediately advise TRT of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.3 TRT and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by TRT, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Customer shall unconditionally ratify any actions taken by TRT under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of TRT agreeing to supply the Works, 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).
- 16.2 The Customer indemnifies TRT from and against all TRT's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising TRT's rights under this clause.
- 16.3 The Customer irrevocably appoints TRT and each director of TRT as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

17. Defects in Materials

- 17.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify TRT of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford TRT an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which TRT has agreed in writing that the Customer is entitled to reject, TRT's liability is limited to either (at TRT's discretion) replacing the Materials or repairing the Materials.
- 17.2 Materials will not be accepted for return other than in accordance with 17.1 above and provided that:
- (a) the Customer has complied with the provisions of clause 17.1; and
 - (b) TRT has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Customer's cost within fourteen (14) days of the delivery date; and
 - (d) TRT will not be liable for Materials which have not been stored or used in a proper manner; and
 - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 Subject to clause 17.1, non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.

18. Warranties

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

19. Consumer Guarantees Act 1993

- 19.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by TRT to the Customer.

20. Intellectual Property

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

21. Default and Consequences of Default

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TRT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes TRT any money the Customer shall indemnify TRT from and against all costs and disbursements incurred by TRT in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, TRT's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies TRT may have under this Contract, if a Customer has made payment to TRT, 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 TRT under this clause 21, 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.
- 21.4 Without prejudice to TRT's other remedies at law TRT shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to TRT shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TRT becomes overdue, or in TRT'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 TRT;
 - (c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

22. Cancellation

- 22.1 Without prejudice to any other rights or remedies TRT may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice/s) then TRT may suspend or terminate the supply of the Works. TRT will not be liable to the Customer for any loss or damage the Customer suffers because TRT has exercised its rights under this clause.
- 22.2 TRT may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice TRT shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to TRT for Works already performed. TRT shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by TRT as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by TRT is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. TRT 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"). TRT acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by TRT that may result in serious harm to the Customer, TRT 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.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to TRT in respect of Cookies where the Customer utilises TRT's website to make enquiries. TRT 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 Customer type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to TRT when TRT sends an email to the Customer, so TRT may collect and review that information ("collectively Personal Information")
- If the Customer consents to TRT's use of Cookies on TRT's website and later wishes to withdraw that consent, the Customer may manage and control TRT's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Customer authorises TRT or TRT's agent to:
- (a) access, collect, retain and use any information about the Customer;

- (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 TRT from the Customer directly or obtained by TRT 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.
- 23.4 Where the Customer is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Customer shall have the right to request TRT for a copy of the Personal Information about the Customer retained by TRT and the right to request TRT to correct any incorrect Personal Information about the Customer held by TRT.

24. Suspension of Works

- 24.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Customer hereby expressly acknowledges that:
- (a) TRT 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 6.5 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 TRT by a particular date; and
 - (iv) TRT has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if TRT 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 TRT exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to TRT 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 TRT suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes TRT from continuing the Works or performing or complying with TRT's obligations under this Contract, then without prejudice to TRT's other rights and remedies, TRT may suspend the Works 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 Works is based. All costs and expenses incurred by TRT as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 24.2 If pursuant to any right conferred by this Contract, TRT suspends the Works and the default that led to that suspension continues unremedied subject to clause 22.1 for at least ten (10) working days, TRT shall be entitled to terminate the Contract, in accordance with clause 22.

25. Service of Notices

- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

26. Trusts

- 26.1 If the 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 TRT may have notice of the Trust, the Customer covenants with TRT as follows:
- (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 TRT (TRT 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.

27. General

- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Westport, New Zealand.
- 27.4 TRT 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 TRT of these terms and conditions (alternatively TRT's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 TRT may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.6 The Customer cannot licence or assign without the written approval of TRT.
- 27.7 TRT may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of TRT's sub-contractors without the authority of TRT.
- 27.8 The Customer agrees that TRT 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 TRT to provide Works to the Customer.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.