
Ron Kirk Joinery 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 **"RKJ"** means Ron Kirk Joinery Limited, its successors and assigns or any person acting on behalf of and with the authority of Ron Kirk Joinery Limited.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting RKJ to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Services"** means all Services (including consultation, manufacturing and/or installation services) or Goods supplied by RKJ to the Client at the Client's request from time to time (where the context so permits the terms 'Services' or 'Goods' shall be interchangeable for the other).
- 1.5 **"Worksite"** means the address nominated by the Client to which the Goods are to be supplied by RKJ.
- 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 Services.
- 1.7 **"Non-Conforming Building Product"** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Services:
- (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, 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.
- 1.9 **"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 client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using RKJ's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between RKJ and the Client in accordance with clause 6. below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Services on credit shall not take effect until the Client has completed a credit application with RKJ and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, RKJ reserves the right to refuse delivery;
 - (c) RKJ reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases RKJ will notify the Client in advance of any such substitution. Such substitution may arise where a specified product in the finish schedule is unavailable or requires an extensive lead time. Any changes in the Price shall be deemed a variation as per clause 6.2; and
 - (d) any advice, recommendation, information, assistance or service provided by RKJ in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent, and is based on RKJ's own knowledge and experience and shall be accepted without liability on the part of RKJ. Where such advice or recommendations are not acted upon then RKJ shall require the Client or their agent to authorise commencement of the Services in writing. RKJ shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.5 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 The Client acknowledges that RKJ shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to RKJ, that person shall have the full authority of the Client to order any Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to RKJ for all additional costs incurred by RKJ (including RKJ's profit margin) in providing any Services or variation/s requested thereto by the Client's duly authorised representative.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that RKJ 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 RKJ in the formation and/or administration of this Contract; and/or

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- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by RKJ in respect of the Services.
- 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 RKJ; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Change in Control**
- 5.1 The Client shall give RKJ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by RKJ as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At RKJ's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by RKJ to the Client in respect of Services performed or Goods supplied; or
 - (b) RKJ's quoted Price (subject to clause 6.2) which shall be binding upon RKJ provided that the Client shall accept RKJ's quotation in writing within thirty (30) days.
- 6.2 RKJ reserves the right to change the Price:
- (a) if a variation to the Goods/Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (b) 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 Client, safety considerations (discovery of asbestos, 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, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
 - (c) if during the course of the Services, the Goods cease to be available from the Seller's third party suppliers, then the Seller reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (d) in the event of increases to the Seller in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Seller's control.
- 6.3 Variations will be charged for on the basis of RKJ's quotation, and will be detailed in writing, and shown as variations on RKJ's invoice. The Client shall be required to respond to any variation submitted by RKJ within ten (10) working days. Failure to do so will entitle RKJ 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 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by RKJ, which may be:
- (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by RKJ.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and RKJ.
- 6.6 RKJ may in its discretion allocate any payment received from the Client towards any invoice that RKJ determines and may do so at the time of receipt or at any time afterwards. On any default by the Client RKJ may re-allocate any payments previously received and allocated. In the absence of any payment allocation by RKJ, payment will be deemed to be allocated in such manner as preserves the maximum value of RKJ's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by RKJ nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by RKJ is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.7 prevents the Client from the ability to dispute any invoice.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to RKJ an amount equal to any GST RKJ must pay for any supply by RKJ under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.9 **Due to worldwide stock shortages caused by a Global Pandemic there may be a time when quoted accessories or products need to be substituted. Any difference in cost will be borne by the client.**
- 7. Provision of the Services**
- 7.1 Subject to clause 7.2 it is RKJ's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that RKJ claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond RKJ's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Services; or
 - (c) notify RKJ that the Worksite is ready.
- 7.3 At RKJ's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 RKJ may deliver the Services 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 RKJ for delivery of the Services is an estimate only and RKJ will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that RKJ is unable to supply the Services as agreed

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solely due to any action or inaction of the Client, then RKJ shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.

8. Worksite Access and Condition

- 8.1 RKJ is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by RKJ will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 8.2 It is the intention of RKJ and agreed by the Client that:
- (a) the Client shall ensure that RKJ 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). RKJ 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 RKJ;
 - (b) it is the Client's responsibility to provide RKJ, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - (c) the Client shall contact adjoining neighbours and gain their permission to remove any walls or fences on boundaries and unless otherwise agreed, it shall be the Client's responsibility to organise either temporary fencing and/or security guards to secure the Worksite during the performance of the Services by RKJ 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 Client.
- 8.3 The Client agrees to be present at the Worksite when and as reasonably requested by RKJ and its employees, contractors and/or agents.
- 8.4 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of RKJ to undertake a Worksite induction during working hours, the Client 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 Client shall be liable to pay RKJ's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where RKJ is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out RKJ'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 Client and/or third party acting on behalf of the Client must at all times be accompanied by RKJ.

9. Risk

- 9.1 If RKJ retains ownership of the Goods under clause 12. then:
- (a) where RKJ is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Goods at RKJ's address; or
 - (ii) the Goods are delivered by RKJ or RKJ's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where RKJ is to both supply and install Goods then RKJ 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 Client.
- 9.2 Where RKJ is required to install the Goods the Client 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 RKJ 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.
- 9.3 Notwithstanding the provisions of clause 9.1 if the Client specifically requests RKJ to leave Goods outside RKJ's premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 9.4 The Client acknowledges that Goods (including but not limited to paint, timber, tiles) supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. SCJ will make every effort to match batches/samples of the Goods supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur.
- 9.5 Marble and Granite are porous products, and therefore, Goods are sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Client agrees to indemnify RKJ against any damage occurring after delivery and installation.
- 9.6 The Client acknowledges that Goods supplied may:
- (a) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (b) mark or stain if exposed to certain substances; and
 - (c) be damaged or disfigured by impact or scratching.

10. Underground Locations/Hidden Services

- 10.1 Prior to RKJ commencing any work the Client must advise RKJ of the precise location of all underground/hidden services on the Worksite and clearly mark the same. The underground/hidden mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 10.2 Whilst RKJ will take all care to avoid damage to any underground/hidden services the Client agrees to indemnify RKJ in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

11. Compliance with Laws

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- 11.1 The Client and RKJ 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.
- 11.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.3 Where the Client has supplied products for RKJ to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in RKJ's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then RKJ shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 11.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.5 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), RKJ 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 Client who has engaged a third party head contractor.

12. Title

- 12.1 RKJ and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid RKJ all amounts owing to RKJ; and
 - (b) the Client has met all of its other obligations to RKJ.
- 12.2 Receipt by RKJ of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to RKJ on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for RKJ and must pay to RKJ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by RKJ shall be sufficient evidence of RKJ's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with RKJ to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for RKJ and must pay or deliver the proceeds to RKJ on demand;
 - (e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of RKJ and must sell, dispose of or return the resulting product to RKJ as it so directs;
 - (f) unless the Goods have become fixtures the Client irrevocably authorises RKJ to enter any premises where RKJ believes the Goods are kept and recover possession of the Goods;
 - (g) RKJ may recover possession of any Goods in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of RKJ; and
 - (i) RKJ may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to RKJ for Services – that have previously been supplied and that will be supplied in the future by RKJ to the Client.
- 13.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RKJ may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, RKJ 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 RKJ; and
 - (d) immediately advise RKJ of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 RKJ and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by RKJ, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by RKJ under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13.), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of RKJ agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies RKJ from and against all RKJ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RKJ's rights under this clause.
- 14.3 The Client irrevocably appoints RKJ and each director of RKJ as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14. including, but not limited to, signing any document on the Client's behalf.

15. Defective Goods/Services

- 15.1 The Client shall inspect the Goods on delivery and shall within thirty (30) days of delivery (time being of the essence) notify RKJ of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford RKJ an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which RKJ has agreed in writing that the Client is entitled to reject, RKJ's liability is limited to either (at RKJ's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above and provided that:
- (a) RKJ has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) RKJ will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.3 Subject to clause 15.1, non-defective, non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

16. Consumer Guarantees Act 1993

- 16.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by RKJ to the Client.

17. Intellectual Property

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

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

19. Cancellation

- 19.1 Without prejudice to any other rights or remedies RKJ may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then RKJ may suspend or terminate the supply of the Services. RKJ will not be liable to the Client for any loss or damage the Client suffers because RKJ has exercised its rights under this clause.
- 19.2 RKJ may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice RKJ shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to RKJ for Services already performed. RKJ shall not be liable for any loss or damage whatsoever arising from such cancellation.

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- 19.3 In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by RKJ as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19.5 **Privacy Act 2020**
- 19.6 All emails, documents, images or other recorded information held or used by RKJ is Personal Information as defined and referred to in clause 19.8 and therefore considered confidential. RKJ acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 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"). RKJ acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by RKJ that may result in serious harm to the Client, RKJ will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 19.7 Notwithstanding clause 19.5, privacy limitations will extend to RKJ in respect of Cookies where the Client utilises RKJ's website to make enquiries. RKJ agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to RKJ when RKJ sends an email to the Client, so RKJ may collect and review that information ("collectively Personal Information")
- If the Client consents to RKJ's use of Cookies on RKJ's website and later wishes to withdraw that consent, the Client may manage and control RKJ's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.8 The Client authorises RKJ or RKJ's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by RKJ from the Client directly or obtained by RKJ from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 19.9 Where the Client is an individual the authorities under clause 19.8 are authorities or consents for the purposes of the Privacy Act 2020.
- 19.10 The Client shall have the right to request (by e-mail) from RKJ, a copy of the Personal Information about the Client retained by RKJ and the right to request that RKJ correct any incorrect Personal Information.
- 19.11 RKJ will destroy Personal Information upon the Client'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.
- 19.12 The Client can make a privacy complaint by contacting RKJ via e-mail. RKJ 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

20. Suspension of Services

- 20.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) RKJ has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to RKJ by a particular date; and
 - (iv) RKJ has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if RKJ suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if RKJ exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to RKJ under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of RKJ suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes RKJ from continuing the Services or performing or complying with RKJ's obligations under this Contract, then without prejudice to RKJ's other rights and remedies, RKJ may suspend the Services

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immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by RKJ as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

- 20.2 If pursuant to any right conferred by this Contract, RKJ suspends the Services and the default that led to that suspension continues unremedied subject to clause 19.1 for at least ten (10) working days, RKJ shall be entitled to terminate the Contract, in accordance with clause 19..

21. Service of Notices

- 21.1 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.
- 21.2 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.

22. Trusts

- 22.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not RKJ may have notice of the Trust, the Client covenants with RKJ as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of RKJ (RKJ will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

23. General

- 23.1 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).
- 23.2 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.
- 23.3 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 New Zealand.
- 23.4 Except to the extent permitted by law "CGA", RKJ shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RKJ of these terms and conditions (alternatively RKJ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 23.5 RKJ may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.6 The Client cannot licence or assign without the written approval of RKJ.
- 23.7 RKJ may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of RKJ's sub-contractors without the authority of RKJ.
- 23.8 The Client agrees that RKJ may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for RKJ to provide Services to the Client.
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party, or **National or Global Pandemic and/or the implementation of regulations directions rules or measures being enforced by Governments or embargo causing stock delays or shortages.**
- 23.9 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.