
Paramount Stainless (2022) Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Paramount 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.
- 1.2 **“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.
- 1.3 **“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 Paramount’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.
- 1.4 **“Goods”** means all Goods or Services (including consultation, manufacturing and/or installation Services) supplied by Paramount to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Services.
- 1.6 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.7 **“Paramount”** means Paramount Stainless (2022) Limited, its successors and assigns.
- 1.8 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Paramount 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 the Goods and/or 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 Goods on credit shall not take effect until the Client has completed a credit application with Paramount and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Paramount reserves the right to refuse Delivery; and
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, the Goods are not or cease to be available, Paramount reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases Paramount will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order and/or Services on hold, as per clause 7.5 until such time as Paramount and the Client agree to such changes.
- 2.5 Any advice, recommendation, information, assistance or service provided by Paramount in relation to the Goods or Services supplied is given in good faith to the Client, or the Client’s agent and is based on Paramount’s own knowledge and experience and shall be accepted without liability on the part of Paramount. Where such advice or recommendations are not acted upon then Paramount shall require the Client or their agent to authorise commencement of the Services in writing. Paramount shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

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

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4. Errors and Omissions

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

6. Price and Payment

- 6.1 At Paramount's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Paramount to the Client; or
 - (b) the Price as at the date of Delivery of the Goods according to Paramount's current price list; or
 - (c) Paramount's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of either twenty-one (21) or thirty (30) days.
- 6.2 Paramount reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) 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, as a result of delays from third party suppliers, prerequisite work by any third party not being completed, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Paramount in the cost of labour or materials which are beyond Paramount's control.
- 6.3 Variations will be charged for on the basis of Paramount's quotation, and will be detailed in writing, and shown as variations on Paramount's invoice. The Client shall be required to respond to any variation submitted by Paramount within ten (10) working days. Failure to do so will entitle Paramount 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 Paramount's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Paramount, which may be:
- (a) on or before Delivery of the Goods;
 - (b) on completion of the Services;
 - (c) by way of instalments/progress payments in accordance with Paramount's payment schedule;
 - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Paramount.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be used other than to remedy defects in the performance of Paramount's obligations under the Contract.
- 6.7 Payment may be made by cash, electronic/on-line banking or by any other method as agreed to between the Client and Paramount.
- 6.8 Paramount may in its discretion allocate any payment received from the Client towards any invoice that Paramount determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Paramount may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Paramount, payment will be deemed to be allocated in such manner as preserves the maximum value of Paramount's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Paramount nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Paramount is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Client from the ability to dispute any invoice.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Paramount an amount equal to any GST Paramount must pay for any supply by Paramount under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Paramount's address; or
 - (b) Paramount (or Paramount's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At Paramount's sole discretion the cost of Delivery is in addition to the Price.

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- 7.3 Paramount may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Subject to clause 7.5 it is Paramount's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.5 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Paramount claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Paramount'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 Paramount that the worksite is ready.
- 7.6 Any time specified by Paramount for delivery of the Services is an estimate only and Paramount 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 Paramount is unable to supply the Services as agreed solely due to any action or inaction of the Client, then Paramount 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. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Paramount is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Paramount is sufficient evidence of Paramount's rights to receive the insurance proceeds without the need for any person dealing with Paramount to make further enquiries.
- 8.3 If the Client requests Paramount to leave Goods outside Paramount's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 Unless otherwise agreed, where Paramount is to both supply and install Goods then Paramount 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.
- 8.5 Where Paramount 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 Paramount shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.6 The Client acknowledges and accepts that:
- (a) Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Paramount will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
 - (b) Paramount is only responsible for Goods that are supplied by Paramount, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify Paramount against any loss or damage to the Services, or caused by the goods, or any part thereof howsoever arising;
 - (c) stainless steel is a textured material and can be of a porous nature. The Client accepts that products made from this material can rust and mark easily. The Client accepts that care should be taken to maintain the finish of and longevity of stainless steel products;
 - (d) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods; and
 - (e) routine cleaning will prolong the original appearance of the mild/stainless steel and provides maximum corrosion resistance when it is cleaned regularly. The Client further agrees that crevice corrosion (tea staining) may occur if dirt, grime and surface stains containing corrosive substances are left on the stainless steel surface. The frequency of cleaning required will depend on aesthetic requirements, severity of the environment, suitability of the stainless steel grade and surface finish for that particular environment, the presence or lack of heavy rains to clean the surface, and the design of the mild/stainless steel.
- 8.7 Paramount accepts no responsibility for:
- (a) any damage or defects in any Goods caused by movement and/or interference of the said Goods; and
 - (b) painting, re-decorating, re-sealing, carpentry or any other Services required for the restoration or making good of any surface/area where any Services have been carried out.
- 8.8 Whilst Paramount will take all due care during installation Paramount will not accept any responsibility for scratches to surrounding surfaces caused during installation of the Goods in a tight fit area.
- 8.9 It is the recommendation of Paramount where any surrounding walls/surfaces are to be painted, that the final coat of paint is not applied until the benchtop is installed (especially in a scullery or tight area with walls to three (3) edges). Paramount accept no liability for any defects in the Goods that may occur in the event the Client chooses not follow this recommendation.
- 8.10 Where Paramount are only supply the Goods and not installing the Goods, Paramount shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.

9. Accuracy of Client's Plans and Measurements

- 9.1 In the event the Client gives information relating to the Goods (including plans, specifications, CAD drawings, measurements, quantities, and other information provided by the Client):
- (a) that it is the Client's responsibility to verify the accuracy of the information before the Client or Paramount places an order based on the information. Paramount accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause; and

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- (b) Paramount shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Paramount accepts no responsibility for any loss, damages, or costs however resulting therefrom, including any variation to the Goods required due to inaccurate plans provided by the Client, such additional Services shall be charged in accordance with clause 6.2.
- 9.2 If the giving of an estimate or quotation for the supply of Goods involves Paramount estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of Paramount's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 9.3 Should the Client require any changes to Paramount's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 10. Worksite Access and Condition**
- 10.1 Paramount is not responsible for the removal of rubbish from or clean-up of the building/construction worksite/s. All rubbish generated by Paramount 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.
- 10.2 It is the intention of Paramount and agreed by the Client that:
- (a) the Client shall ensure that Paramount 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). Paramount 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 Paramount; and
- (b) it is the Client's responsibility to provide Paramount, while at the worksite, with adequate access to available water, electricity, toilet and washing facilities where required.
- 10.3 The Client agrees to be present at the worksite when and as reasonably requested by Paramount and its employees, contractors and/or agents.
- 10.4 Where Paramount requires that Goods or plant and tools required for the Services be stored at the worksite, the Client shall supply Paramount a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 10.5 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of Paramount 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 Paramount's standard (and/or overtime, if applicable) hourly labour rate; or
- (b) where Paramount is in control of the worksite, the Client and/or the Client's third-party contractors must initially carry out Paramount'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 Paramount.
- 11. Underground Locations**
- 11.1 Prior to Paramount commencing any work the Client must advise Paramount of the precise location of all underground services on the worksite and clearly mark the same. The underground mains & 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.
- 11.2 Whilst Paramount will take all care to avoid damage to any underground services the Client agrees to indemnify Paramount 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 11.1.
- 12. Compliance with Laws**
- 12.1 The Client and Paramount 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.
- 12.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, 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.
- 12.3 Where the Client has supplied products for Paramount 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 Paramount's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then Paramount 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.
- 12.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 12.5 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), Paramount 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.
- 13. Title**
- 13.1 Paramount and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Paramount all amounts owing to Paramount; and

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- (b) the Client has met all of its other obligations to Paramount.
- 13.2 Receipt by Paramount 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.
- 13.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Paramount on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Paramount and must pay to Paramount the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Paramount and must pay or deliver the proceeds to Paramount on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Paramount and must sell, dispose of or return the resulting product to Paramount as it so directs;
 - (e) the Client irrevocably authorises Paramount to enter any premises where Paramount believes the Goods are kept and recover possession of the Goods;
 - (f) Paramount may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Paramount; and
 - (h) Paramount may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 14.1 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 that have previously been supplied and that will be supplied in the future by Paramount to the Client, and the proceeds from such Goods as listed by Paramount to the Client in invoices rendered from time to time.
- 14.2 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 Paramount may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Paramount 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 or the proceeds of such Goods in favour of a third party without the prior written consent of Paramount; and
 - (d) immediately advise Paramount of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 Paramount and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by Paramount, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by Paramount under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of Paramount agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies Paramount from and against all Paramount's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Paramount's rights under this clause.
- 15.3 The Client irrevocably appoints Paramount and each director of Paramount as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects and Returns

- 16.1 The Client shall inspect the Goods on Delivery and shall within three (3) days of Delivery (time being of the essence) notify Paramount of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Paramount 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 fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Paramount has agreed in writing that the Client is entitled to reject, Paramount's liability is limited to either (at Paramount's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) Paramount has agreed in writing to accept the return of the Goods;
 - (b) the Goods are returned at the Client's cost within seven (7) days of the Delivery date;
 - (c) Paramount will not be liable for Goods which have not been stored or used in a proper manner; and

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- (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.
- 16.3 Returned Goods may (at Paramount's sole discretion), incur restocking and handling fees.
- 16.4 Subject to clause 16.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 17. Warranty**
- 17.1 To the extent permitted by statute, no warranty is given by Paramount as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Paramount shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 18. Consumer Guarantees Act 1993**
- 18.1 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 Paramount to the Client.
- 19. Intellectual Property**
- 19.1 Where Paramount has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Paramount. Under no circumstances may such designs, drawings and documents be used without the express written approval of Paramount.
- 19.2 The Client warrants that all designs, specifications or instructions given to Paramount will not cause Paramount to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Paramount against any action taken by a third party against Paramount in respect of any such infringement.
- 19.3 The Client agrees that Paramount may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Paramount has created for the Client.
- 20. Default and Consequences of Default**
- 20.1 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 Paramount's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes Paramount any money the Client shall indemnify Paramount from and against all costs and disbursements incurred by Paramount in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Paramount's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies Paramount may have under this Contract, if a Client has made payment to Paramount, 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 Paramount under this clause 20 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.
- 20.4 Without prejudice to Paramount's other remedies at law Paramount shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Paramount shall, whether or not due for payment, become immediately payable if:
- any money payable to Paramount becomes overdue, or in Paramount's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by Paramount;
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 21. Cancellation**
- 21.1 Without prejudice to any other remedies Paramount may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Paramount may suspend or terminate the supply of Goods to the Client. Paramount will not be liable to the Client for any loss or damage the Client suffers because Paramount has exercised its rights under this clause.
- 21.2 Paramount may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Paramount shall repay to the Client any money paid by the Client for the Goods. Paramount shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Paramount as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 22. Suspension of Services**
- 22.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- Paramount 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:
 - 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 Client; or
 - 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
 - the Client has not complied with an adjudicator's notice that the Client must pay an amount to Paramount by a particular date; and
 - Paramount has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.

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- (b) if Paramount 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 Paramount exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Paramount 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 Paramount suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes Paramount from continuing the Services or performing or complying with Paramount's obligations under this Contract, then without prejudice to Paramount's other rights and remedies, Paramount may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Paramount as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, Paramount suspends the Services and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, Paramount shall be entitled to terminate the Contract, in accordance with clause 21.
- 23. Privacy Policy**
- 23.1 All emails, documents, images or other recorded information held or used by Paramount is "**Personal Information**" as defined and referred to in clause 23.3 and therefore considered confidential. Paramount 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 as set out in the Act. Paramount acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Paramount that may result in serious harm to the Client, Paramount will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to Paramount in respect of Cookies where the Client utilises Paramount's website to make enquiries. Paramount 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 Paramount when Paramount sends an email to the Client, so Paramount may collect and review that information ("collectively Personal Information")
- If the Client consents to Paramount's use of Cookies on Paramount's website and later wishes to withdraw that consent, the Client may manage and control Paramount's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client authorises Paramount or Paramount'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 Paramount from the Client directly or obtained by Paramount 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.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.5 The Client shall have the right to request (by e-mail) from Paramount, a copy of the Personal Information about the Client retained by Paramount and the right to request that Paramount correct any incorrect Personal Information.
- 23.6 Paramount 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.
- 23.7 The Client can make a privacy complaint by contacting Paramount via e-mail. Paramount 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 Privacy Commissioner at <http://www.privacy.org.nz>.
- 24. Service of Notices**
- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Paramount may have notice of the Trust, the Client covenants with Paramount 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 Paramount (Paramount will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Courts of New Zealand.
- 26.4 Subject to the CGA, Paramount 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 Paramount of these terms and conditions (alternatively Paramount's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.5 Paramount may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of Paramount.
- 26.7 Paramount 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 Paramount's sub-contractors without the authority of Paramount.
- 26.8 The Client agrees that Paramount 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 Paramount to provide Goods to the Client.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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. This clause does not apply to a failure by the Client to make a payment to Paramount.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.