Assist Trade Services – Terms & Conditions of Trade

Definitions "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works 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 if the Client is a partnership, it shall bind each partner jointly and severally,

and if the Client is a part of a Trust, shall be bound in their capacity as a trustee; (c)

and includes the Client's executors, administrators, successors and permitted

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"Contractor means Assist Irade Services Limited I/A Assist Irade Services, its successors and assigns.

"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 the Contractor's website, then the Client shall have the right to enable if disable the Cookies first by selecting the option to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.

website.

"Intended Use" means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.

"Non-Conforming Building Product" means any associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Works:

are regarded as Non-Conforming for an interiuse use in, when association that works:

(a) the product is not, or will not be, safe; or (b) does not, or will not, comply with the relevant regulatory provisions; or 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.

"Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between the Contractor and the Client in accordance with dauses? Pelson:

"Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms Works' or Materials' shall be interchangeable for the other).

"Workstle" means the address nominated by the Client to which the Materials are to be supplied by the Contractor. 1.8 1.9

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"Worksate" means the address nominated by the Client to which the Materials are to be supplied by the Contractor.

Acceptance
The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract, and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions of the Client places an order for or accepts delivery of any Works.
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.

Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

The Client acknowledges and accepts that the supply of:
(a) Works on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Works requested exceeds the Clients credit limit andfort the account exceeds the payment terms, the Contractor reserves the right to refuse delivery; and (b) Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or case to be available, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 7.2. In all such cases the Contractor will not the Contractor will not be contractor will not be contractor will not contract or and the Client agree to such clause 8.2 until such time as the Contractor and the Client agree to such clause 8.2 until sunses hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between the Contractor and the Client cost of the contractor of

denies access or use of the land or property, the Client shall be liable for all costs incurred by the Contractor in gaining permission to access and/or use the property through any legal process that may be deemed necessary. If the Contractor has been requested by the Client to diagnose a fault that requires investigation, diassesmelty and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead. 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.

Authorised Representatives
The Client acknowledges that the Contractor shall (for the duration of the Works) liaised directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Materials, Works and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Materials, Works or variation's requested thereto by the Client's duly authorised representative.

Errors and Omissions

Errors and Omissions
The Client acknowledges and accepts that the Contractor 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 the Contractor in the formation and/or admissiration of this Contract, and/or contained informitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.

If 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 the Contractor; the Client:

(a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but

but not be responsible for any additional costs incurred by the Contractor arising from the error or omission.

Change in Control
The Client shall give the Contractor 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 edetals (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 the Contractor as a result of the Client's failure to comply with this clause.

Credit Card Information

The Contractor will:

(a) keep the Cilent's personal details, including credit card details for only as long as is deemed necessary by the Contractor;

(b) not disclose the Cilent's credit card details to any third party, and conditions to the Cilent's credit card details to any third party, and conditions the Cilent support of the Cilent's personal information, except is accordance with the Privacy Act (clause 25) or where required by law. The Cilent expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due and outstanding by the Cilent, then the Contractor is entitled to immediately charge the Cilent's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issue any and all amounts which may be due by the Cilent pursuant to the terms of this Contract.

Price and Payment

Price and Payment
At the Contractor's sole discretion, the Price shall be either:
(a) as indicated on invoices provided by the Contractor to the Client in respect
of Works performed or Materials supplied:
(b) the Contractor's Price at the date of delivery of the Works according to the
Contractor's current processor. (b)

(b) the Contractor's Price at the date or derivery or the Trans accounting a Contractor's current pricelist; or the Contractor's quoted Price (subject to clause 7.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.

The Contractor reserves the right to change the Price:

(a) if a variation to the Materials which are to be supplied is requested; or if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions), limitations to the Workste access and/or craw spaces, obscured Workste defects not visible at the time of inspection (including, but not limited to, existing leaks or mosture behind walls etc.), prerquisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, safely considerations (discovery of asbestos etc.), hard rock or other barriers below the surface, iron reinforcing ords in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or consideration of the variations in foreign currency rates of exchange and/or international freight and insurance charges or increases to the Contractor in tens of all other and in the contractor of the cost of abour or Materials which are beyond the Contractor's control.

Variations will be charged fro on the basis of the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their competion.

their completion.

At the Contractor's sole discretion, a reasonable non-refundable deposit may be

At the Contractor's source unscream, a reasonation with required.

Time for payment for the Works being of the essence, the Price will be payable by the Client on the date's determined by the Contractor, which may be:

(a) on completion of the Works;

(b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of a uthorised variations and the value of any Materials delivered to the worksite but not yet installed.

(c) for certain approved Client's, 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:

notices; the date specified on any invoice or other form as being the date for payment;

(d) the date specified on any invoice or other form as being the date for payment; or failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor. At the agreement of both parties, payment of the Price may be subject to retention. 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 Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A of the Construction Contracts Act 2002 and as such no Retention Money shall be used other than to remedy defects in the performance of the Contractor's obligations under the Contract.

Payment may be made by electroniclon-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.

The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor.

The Contractor may payments previously received and allocated. In the absence of any payment allocation by the Contractor, or payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor se Purchase Money Security Interest (as defined in the PPSA) in the Materials.

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 the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Contractor is a claim made under the Construction Contracts Republicant in this claim. Pay prevents the Client from the ability to dispute any invoice.

ZOVC. Trouming in this decided by a control of the price of the price of the price of the Contractor and amount equal to any GST the Contractor must pay for any supply by the Contractor and entire this or any other agreement for the sale of the Materials. 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.

Provision of the Works

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Provision of the Works Subject to clause 82 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible. The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client

beyond the Contractor Scottled, including but not immed to any failure by the Client to:

(a) make a selection; or (b) have the Works; or (c) notify the Contractor that the Worksite is ready.

The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor 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 Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

Dimensions, Plans and Specifications
All customary building industry tolerances shall apply to the dimensions and measurements of the Materials unless the Contractor and the Client agree otherwise in writing. The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client if the giving of an estimate or quotation for the supply of Materials involves the Contractor estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Contractor's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.

quotation.

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

Risk
If the Contractor retains ownership of the Materials under clause 15 then:
If the Contractor retains ownership of the Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. The cost of delivery is either included in the Price or is in addition to the Price as agreed between the parties.

Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is no resent at the address), and unless otherwise agreed, where the Contractor is both supply and install Materials then the Contractor shall maintain a contract own's insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

Notwithstanding the provisions of clause 10.1 if the Client is specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials are insured adequately or at all. In the event that such Materials shall aways be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's exponsible.

damaged or destroyed then replacement of the Materials shall be at the Client's expense. Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied is given in good faith to the Client's expent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works. The Client warrants that any structures to which the Materials are be to affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason including the discovery of assession, defedive or unsafe plumbing or latent or unfavourable sol conditions such as liquidaction residue or risk) that the Contractor, or the Contractor's employees, reasonably form the opinion that the Client's permisses is not safe for the Works to proceed then the Contractor shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 8.2 above) until the Contractor's expenditions and excellent on proceed.

where the Contractor has performed temporary repairs that:
(i) the Contractor offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.

provide the Client with an estimate for the full repair required. the Contractor is only responsible for components that are replaced by the Contractor and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure, under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered

product. In the event asbestos (or other nazarous materials) is understand to the Works;

(i) the Contractor shall suspend the Works;

(ii) the Cleint shall be fully responsible for the resolution of any resulting problems; and in any additional cost incurred by the Contractor shall be added to the Price under clause 7.2, where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims or drainage components used due to the difference in metal alloys available and manufacturing standards and tolerances shall not deemed to be a defect in the Materials supplied may:

(b)

Materials supplied may:
(i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Contractor 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; expand, contract or distort as a result of exposure to heat, cold, (ii)

weather, mark or stain if exposed to certain substances; be damaged or disfigured by impact or scratching; and create undesirable smells caused by a system as a result of its

(v) be damaged or disfigured by impact or scratching; and (v) create undesirable smells caused by a system as a result of its normal operation.

Plumbing Risk

The Client acknowledges and accepts that:

(a) choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, the Contractor cannot give any guarantee against reoccurrence or further damage. In the event that the Client requests the Contractor to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and the Contractor does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the Contractor may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment due to the risk of the equipment based by the contractor may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment and to the installation of some appliances can cause water hammer or damage to existing pipe work. The Client agrees to indemnify the Contractor against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.

Roofing Risk

The Client acknowledges and accepts that:

(a) the Contractor's quotation for repairs to existing roofs (tiles) shall be based only on the replacement of damaged roofing/cladding/tiles and/or any other roofing materials with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of roofing/cladding/tiles and/or any other roofing materials that have slight imperfections unless authorised by the Client prior to the commencement of then this shall be a variation to the original quotation and clause 7.2 will apply;

(b) no persons other than those auth

Contractor does not obeen to be delective or altext the integrity of the rother this shall be a variation to the original quotation and clause 7.2 will apply; no persons other than those authorised or employed by the Contractor are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. The Contractor shall not be liable for any loss, damages, injunes, or costs however arising resulting from the Client's failure to comply with this clause; the Contractor accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's propers which may occur during the deaning process where such loss or damage is due to pre-existing faults or leaks; it is their responsibility to ensure that any uncompleted areas are kept watertight during construction if there is any delay in the Works due to circumstances beyond the control of the Contractor (including, but not limited to, waining on another trade, materials, or weather conditions). The Contractor will accept no liability whatsoever for any damages caused as a result of the Client's adultate to comply with this clause; and in the event that either the Contractor is required to remove the Sty Dish prior to the commencement of the Works, or the Client requests his prior to the commencement of the Works, or the Client requests his prior to the commencement of the Works, or the Client requests the responsibility to arrange for a technican to ensure that the Sty Dish has

responsibility to arrange for a technician to ensure that the Sky Dish has been aligned correctly to the satellite for optimum viewing.

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worksite Access and Conditions

The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by the Contractor 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. It is the intention of the Contractor and agreed by the Client that:

(a) the Client shall ensure that the Contractor has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Contractor shall not be liable for any loss or damage to the Worksite (including, without imitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor; and

(b) It is the Client's responsibility to:

(i) provide the Contractor, while at the Worksite, with allocated parking spaces for the Contractor, while at the Worksite, with allocated parking spaces for the Contractor, while at the Worksite, with allocated parking spaces for the Contractor, while at the Worksite, with allocated parking spaces for the Contractor, while at the Worksite, with allocated parking required; and

required; and any tangible items susceptible to damage from the vicinity of the Works (and provide protection where necessary), and agrees that the Contractor shall not be liable for any damage caused to those items through the Client's failure to comply with this clause. Where the Contractor requires that Materials, tools etc. required for the Works be stored at the Worksle, the Client shall supply the Contractor as are area for storage and shall take all reasonable efforts to protect all items from 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. The Client agrees to be present at the Worksite when and as reasonably requested by the Contractor and its employees, contractors and/or agents.

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In the event the Client requires an employee or sub-contractor of the Contractor to undertake a Workstle 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 the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or where the Contractor is in control of the Worksite, the Client and/or Client shirt of party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite 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 the Contractor.

Underground Locations
Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify incude, 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.
Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

The Contractor shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

Assist Trade Services – Terms & Conditions of Trade If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to the deliver any Materials or Works to the Client, the Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Materials or Works at any time before the Materials or Works. The Contractor shall repay to the Client any money paid by the Client for the Materials or Works. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation. The Client may cancel delivery of the Materials and/or Works by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept delivery of the Materials and/or Works shall place the Client is breach of this Contract. 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. Compliance with Laws The Client and the Contractor shall comply with the provisions of all statutes regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works. Materials will not be accepted for return other than in accordance with 18.1 above. Subject to clause 18.1, non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return. applicable to the Profiss, including all you know and releast in its steety laws retaining of any other relevant safety standards or legislation pertaining to the Works. Both parties acknowledge and agree: (a) to comply with the Bullding Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and bullding products to be supplied during the course of the Works, and (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Salandards applicable. Where the Client has supplied products for the Contractor to complete the Works, 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 the Contractor's opinion, it is believed that the materials supplied are Non-Contractor's spring, and will not conform with New Zealand regulations, then the Contractor shall be entitled, without prejudice, to hait the Works until the appropriate conforming products are sourced and all costs associated with such a charge to the plans and design will be invoiced in accordance with clause 72. Any products supplied by the Client shall be void of any warranty. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works. Warranties Warranties Subject to the conditions of warranty set out in clause 19.2 the Contractor warrants that if any defect in any Materials manufactured or Works provided by the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretelon) replace or remedy the defect. The conditions applicable to the warranty given by clause 19.1 are: (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) failure on the part of the Client to properly maintain any Materials or serviced item; or ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor. or 14.2 19.2 Privacy Policy All emails, documents, images or other recorded information held or used by the Contractor is 'Personal Information' as defined and referred to in clause 25.3 and therefore considered confidential. The Contractor 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 the Act. The Contractor acknowledges that in the ventril the comes aware of any data breaches and/or disclosure of the Client's Personal Information pursuant to the Privacy Act 2020 (the Act) including Part II of the OECD Guidelines aware of any data breaches and/or disclosure of the Client's Personal Information held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act. Any release of such Personal Information must be in accordance with the Act. Any release of such Personal Information must be in accordance with the Act. Any release of such Personal Information will extend to the Contractor in respect of Cookles where the Client utilises the Contractor's website to make enquiries. The Contractor was pixels and web beacons (if applicable), such technology allows the collection of Personal Information will extend to the Contractor's such exchange the Act and the Contractor of the Contractor will not be contractor's understance of the Contractor of the Contractor are available to the Contractor may collect and review that information ('collectively Personal Information') If the Client consents to the Contractor or any collect and review that information ('collectively Personal Information') was of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client any manage and control the Contractor's with a contractor or access, collect, retain and use any information about the Client, of the Contracto Privacy Policy (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor, or (iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or (iv) the continued use of any Materials or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or usery. (v) fair wear and tear, any accident or act of God. It was a many shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, aftered or overhauded without the Contractor's consent. In respect of all claims the Contractor shall not be liable to compensate the 14.4 may be required for the Works. Prior to commencement of any Works the Contractor shall carry a routine soundness test of the Worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense. The Clent acknowledges and accepts that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time inducting, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Client. 14.5 (c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or mendying the workmanship or in properly assessing the Client's claim. For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials. In the case of second-hand Materials, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising. 14 6 for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Client. The Client warrants that any existing plumbing, gasfitting and/or associated services in or upon the Worksle that is subject to the Materials and/or Works are in compliance with regulations. The Contractor reserves the right to half all Works (in accordance with the provisions of clause 8.2 above) if in their opinion the Worksle is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Client not wish to proceed the Contractor's quotation. Notwithstanding clause 1.4.1 and pursuant to the Health & Safety at Work Act 2015 (the HSW Act), the Contractor 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 Worksile or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor. 14.7 Consumer Guarantees Act 1993 and the Fair Trading Act 1986 If the Client is acquiring Materials 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 Materials by the Contractor to the Client. The Contractor agrees to abide by the provisions of the Fair Trading Act 1996 ("FTA"). 14.8 20.2 (*PLA*). Intellectual Property Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor. The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infingement. The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client. The Contractor and the Client agree that ownership of the Materials shall not pass uniti: (a) the Client has paid the Contractor all amounts owing to the Contractor, and (b) the Client has met all of its other obligations to the Contractor. Receipt by the Contractor 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. 15.2 21.2 deemed to be paymons ... recognised. It is further agreed that: (a) until ownership of the Materials passes to the Client in accordance with clause 15.1 that the Client is only a ballee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor 25.4 21.3 on request: the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed; the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquisies; the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the critiquary ocurse of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds for any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand; the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on tust for the benefit of the Contractor as it so directs; unless the Materials have become futures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials in transit whether or not delivery has occurred; the Client shall not charge or grant an encumbrance over the Materials have the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client. Mal Property Securities Act 1999 ("PPSA") 25.6 Default and Consequences of Default 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a spolitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees). Further to any other rights or remedies the Contractor may have under this Contract. law. Illent can make a privacy complaint by contacting the Contractor via e-mail. The Clinet can make a privacy complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within hventy (20) days of receipt of the complaint. In the event that the Client is not astisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz. Service of Notices Any written notice given under this Contract shall be deemed to have been given coss of a solicitud with client basis, are comrador sometion agency coss. and bank dishonour fees). Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, 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 the Contractor under this clause 22, 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. Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if: (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due; 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. 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. (e) (f) 26.2 (h) (i) due; the Client has exceeded any applicable credit limit provided by the Contractor; Trusts 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 or as an agent for a trust ("Trust") then whether or not the Contractor any have notice of the Trust, the Client covenants with the Contractor as follows: Personal Property Securities Act 1999 ("PPSA") Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that: (a) these terms and conditions conditions conditions. Contractor, 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 make a receiver, manager, liquidity (provisional exhemise) or similar person is appointed in respect of the Client or any asset of the Client. (c) the Contract extends to all rights of indemnity which the Client rows on subsequently may have against the Trust, the furstees and the trust fund; the Client has full and complete power and authority under the Trusts or from the Trustees of the Trust as the case maybe 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 the trustees and or the frust 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. ees trial. these terms and conditions constitute a security agreement for the purposes of the PPSA; and Suspension of Works Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that: (a) the Contractor 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: or the PF-A; and a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by the Contractor to the Client and the proceeds from such Materials as listed by the Contractor to the Client in invoices rendered from time to time. ently defined to the Client in the 16.2 ient undertakes to: sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; indemnity, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby. To register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of the Contractor, and indemnity; the Client will not during the term of the Contract without consent in writing of the Contractor (the Contractor 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 any resettlement of the trust fund or trust property. the payment is not paid in full by the due date for payment in accordance with dause 7.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or Client, for 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 compiled with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date, and the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract. (ii) (iii) (c) General 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 Contractor, and () immediately advise the Contractor of any material change in its business of practices of selling Materials which would result in a change in the nature of proceeds derived from such sales. Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Client shall unconditionally ratify any actions taken by the Contractor under clauses 16.1 to 16.3. Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA. Contract. if the Contractor suspends work, it. (i) is not in breach of Contract, and 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 And cours among by explanation in replacements. 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, illegad or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or 16.3 to be suffered, by the Client or by any person daiming through the Client; and is entitled to an extension of time to complete the Contract; and 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. 16.4 shall be invalid, void, illegal or unenforoceable the validity, existence, legality and enforoceablity of the remaining provisions shall not be affected, prejudiced or impaired. 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 Auckland Courts of New Zealand. Subject to the CGA, the liability of the Contractor and the Client under this Contract shall be limited to the Price. The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client. The Client cannot licence or assign without the written approval of the Contractor. The Contractor may leated to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction any of the Contractor's which contractors with the Ceitnet of the Works but shall not be relieved from any liability or obligation under this Contractor by other Contractor. The Client agrees that the Contractor way 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 request for the Contractor to provide Works 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 reany 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 reany default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and for the implementation o Security and Charge In consideration of the PMSA. Security and Charge In consideration of the Contractor agreeing to supply the Works, 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 foliagions 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. The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause. The Client invecably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney's to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf. (c) if the Contractor exercises the right to suspend work, the exercise of that right does not. (i) affect any rights that would otherwise have been available to the Contractor 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 to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Contractor suspending work under this provision. (d) due to any act or omission by the Client, the Client effectively precludes the Contractor form continuing the Works or performing or complying with the Contractor's obligations under this Contract, then without prejudice to the Contractor's other rights and remedies, the Contractor sy suspend the Works immediately after serving on the Client a withen notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by the Contractor as a result of such suspension and recommencement shall be payable by the Works and the default that led to that suspension continues un-remedied subject to clause 24.1 for at least tin (10) working days, the Contractor shall be entitled to terminate the Contract, in accordance with clause 24. if the Contractor exercises the right to suspend work, the exercise of that 28.4 28.8 17.3 23.2 28.9 Defects and Returns of Materials The Client shall inspect the Materials on delivery and shall within five (5) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials or repairing the Materials. **18.** 18.1 **cuncetlation**Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Materials or Works to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised as a particular of the parties has exercised as a particular to the party suffers because one of the parties has exercised as a particular to the parties have the parties and the parties have the party suffers because one of the parties has exercised as a particular to the parties have the party suffers to the parties have the party suffers to the parties have the party suffers the parties and parties are the party suffers to t