

# TERMS OF TRADE

## 1. Definitions

- 1.1 "Contractor" means Ulti Group Limited, its successors and assigns or any person acting on behalf of and with the authority of Ulti Group Limited.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Contractor 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).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Contractor and the Client in accordance with clause 6 below.

## 2. Acceptance

- 2.1 The Client is taken to have unconditionally 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.
- 2.2 These terms and conditions shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.

## 3. Price and Payment

- 3.1 At the Contractor's sole discretion, the Price shall be either:
  - (1) as indicated on any invoice provided by the Contractor to the Client; or
  - (2) the Price as at the date of delivery of the Goods according to the Contractor's current price list; or
  - (3) the Contractor's quoted price (subject to clause 4.4) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 3.2 All requests for payment by the Contractor will be in the form of an invoice/ payment claim served under the Construction Contracts Act 2002.
- 3.3 The Contractor may serve invoice/payment claims on a monthly basis no later than 3 working days following the end of each month in relation to Goods supplied to the end of each month.
- 3.4 The Client agrees that service of payment claims may be effected by email to the Client's usual email address used by the Contractor.
- 3.5 The Client may serve a payment schedule in response to each invoice/payment claim which is to be served no later than the 5th working day following service of any invoice/payment claim.
- 3.6 Payment for any invoice/payment claim will be due on the [20th] of the month following the relevant period of any invoice/payment claim unless otherwise agreed to by the parties in writing.
- 3.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.8 Where payment for any invoice/payment claim is not made in full by the due date the Contractor

reserves the right to immediately suspend the supply of all Goods and Services.

3.9 At the Contractor's sole discretion, a deposit may be required and if applicable will be noted on the Contractor's quotation.

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

3.11 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

#### **4. Variations**

4.1 Any increase in the prevailing rates for labour, transport, craneage or materials on or after the date of any quote will be treated as a variation.

4.2 Where any Goods change from the details any quote is based on, the Goods are to be re-priced. Any scope change that occurs as a result of any re-measure becomes a variation.

4.3 Any amendments, instructions or requests by the Client which are not included in any quote will be deemed a variation.

4.4 The Contractor reserves the right to change the Price if a variation to the Contractor's quotation is requested. That includes, but is not limited to any variation as a result of additional Services required due to unforeseen circumstances beyond the Contractor's control, such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, pre-existing structural integrity of the supporting framework to the installation site, prerequisite work by any third party not being completed, difficulties or matching colour, lead times for specifically coloured hardware, or increases to the Contractor in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges).

4.5 Payment for all variations must be made in full when included in any payment claim / invoice.

#### **5. Delivery of Goods/Services**

5.1 Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Services start in a reasonable period of time.

5.2 The Services' 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 to:

- (1) make a selection; or
- (2) have the site ready for the Services; or
- (3) notify the Contractor that the site is ready.

5.3 At the Contractor's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

5.4 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the

Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.5 The Contractor 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.

5.6 Any time or date given by the Contractor to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Contractor will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## 6. Risk

6.1 Where the Contractor retains ownership of the Goods under clause 12 then:

(1) where the Contractor is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either;

(i) the Client or the Client's nominated carrier takes possession of the Goods at the Contractor's address; or

(ii) the Goods are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

(2) where the Contractor is to both supply and install Goods then the Contractor 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.

6.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.

6.3 Holes, cut outs and cutting of the Goods may weaken the strength of the Goods and although it's unlikely, cracking may occur. The Contractor accepts no responsibility against cracks occurring after such Goods (that are subject to holes and cut outs) are installed unless toughened materials are used.

6.4 The Client acknowledges that Goods supplied may 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.

6.5 The Client acknowledges that 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 alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.

6.6 The Client acknowledges that Goods supplied may:

(1) fade or change colour over time; and

(2) expand, contract or distort as a result of exposure to heat, cold, weather; and

(3) mark or stain if exposed to certain substances; and

(4) be damaged or disfigured by impact or scratching.

6.7 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring), the Contractor reasonably forms the opinion that the Client's premises is not safe for the

installation of Goods to proceed then the Contractor shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 5.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.

6.8 The Contractor 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 the Contractor of these terms and conditions. The Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

6.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other event beyond the reasonable control of either party.

## **7. Authorised Representatives and Control**

7.1 Unless otherwise limited as per clause 7.2 the Client agrees that should the Client introduce any third party to the Contractor 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 the Contractor in writing that said person is no longer the Client's duly authorised representative.

7.2 In the event that the Client's duly authorised representative as per clause 7.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.

7.3 The Client specifically acknowledges and 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 Goods, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 7.2 (if any)).

7.4 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

7.5 The Client shall give the Contractor not less than fourteen (14) calendar days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, 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.

## **8. Accuracy of Client's Plans & Measurements**

8.1 The Contractor is entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate or ambiguous, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

8.2 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Contractor places an order based on these

measurements and quantities. The Contractor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

## **9. Specifications**

9.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Contractor's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Contractor.

9.2 It is the responsibility of the Client to ensure that the Goods supplied by the Contractor are:  
(1) of the description, quality and character ordered; and  
(2) fit for the intended purpose required by the Client.

## **10. Access**

10.1 Where the Contractor is to both supply and install Goods, the Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Services. The Services shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.

## **11. Compliance with Laws**

11.1 These terms and conditions are governed by the laws of New Zealand, and are subject to the jurisdiction of the High Court of New Zealand.

11.2 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 Services.

11.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

11.4 The Client agrees that the site will comply with any occupational safety and health laws relating to building/construction sites and any other relevant safety standards or legislation.

11.5 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 do not apply to the supply of Goods by the Contractor to the Client.

## **12. Title**

12.1 The Contractor and the Client agree that ownership of the Goods shall not pass until:

(1) the Client has paid the Contractor all amounts owing to the Contractor; and  
(2) the Client has met all of its other obligations to the Contractor.

12.2 Receipt by the Contractor shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

12.3 It is further agreed that:

- (1) until ownership of the Goods passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and must return the Goods to the Contractor on request.
- (2) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (3) 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 the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- (4) 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 the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- (5) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods.
- (6) the Contractor may recover possession of any Goods in transit whether or not delivery has occurred.
- (7) 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 the Contractor.
- (8) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (1) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (2) a security interest is taken in all Goods previously supplied by the Contractor to the Client (if any) and all Goods that will be supplied in the future by the Contractor to the Client.

13.2 The Client undertakes to:

- (1) 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;
- (2) indemnify, 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 Goods charged thereby;
- (3) not register a financing change statement or a change demand without the prior written consent of the Contractor; and
- (4) immediately advise the Contractor 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.

13.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

13.5 The Client waives its rights under s 148 of the PPSA to receive notification of any verification of registration.

13.6 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.

13.7 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 13.1 to 13.6.

#### **14. Security and Charge**

14.1 In consideration of the Contractor 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, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

14.2 The Client indemnifies 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.

14.3 The Client irrevocably 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 14 including, but not limited to, signing any document on the Client's behalf.

#### **15. Client's Disclaimer**

15.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Contractor and the Client acknowledges that the Goods are bought relying solely upon the Client's own skill and judgment.

#### **16. Defects**

16.1 The Client shall inspect the Goods on delivery and shall within five (5) calendar 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.

16.2 The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way.

16.3 If the Client shall fail to comply with these provisions the Goods shall be deemed to be free from any defect or damage.

16.4 For defective Goods, 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 Goods or repairing the Goods.

16.5 Goods will not be accepted for return other than in accordance with 16.1 above.

#### **17. Warranty**

17.1 Subject to the conditions of warranty set out in clause 17.2 the Contractor warrants that if any defect in any workmanship of 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 discretion) replace or remedy the workmanship.

17.2 The conditions applicable to the warranty given by clause 17.1 are:

(1) the warranty shall only apply if the Goods are maintained by authorised trained servicemen (as approved by the Contractor).

(2) 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 Goods; or

(ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or

(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or

(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

(3) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled without the Contractor's consent.

(4) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

17.3 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. 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 Goods.

17.4 The conditions applicable to the warranty given on Goods supplied by the Contractor are contained on the "Warranty Card" that will be supplied with the Goods.

## **18. Intellectual Property**

18.1 Where the Contractor has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Contractor.

18.2 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 infringement.

18.3 The Client agrees that the Contractor may (at no cost) use for the intended purposes, any documents, designs, drawings or Goods which the Contractor has created for the Client.

## **19. Default & Consequences of Default**

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of eight percent (8%) above the official cash rate, details of the current official cash rate can be found at [www.rbnz.govt.nz](http://www.rbnz.govt.nz). The interest rate will be applied per calendar month compounding monthly.

19.2 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 solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).

19.3 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor by credit card, 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 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

19.4 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

19.5 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:

- (1) any money payable to the Contractor becomes overdue, or in the Contractor's reasonable opinion the Client will be unable to make a payment when it falls due;
- (2) 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
- (3) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 20. Cancellation

20.1 The Contractor 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 the Contractor shall repay to the Client any money paid by the Client for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.2 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 the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

20.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

## 21. Privacy Act 2020

21.1 The Client authorises the Contractor or the Contractor's agent to:

- (1) access, collect, retain and use any information about the Client;
- (i) (including 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.
- (2) disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor 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.

21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 2020.

21.3 The Client shall have the right to request the Contractor for a copy of the information about the Client retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Client held by the Contractor.

## 22. Contractor's Lien

22.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:

- (1) a lien on the item; and
- (2) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

22.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Client.

## 23. Dispute Resolution

23.1 All disputes and differences between the Client and the Contractor touching and concerning this agreement may be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

## 24. Construction Contracts Act 2002

24.1 The Client expressly acknowledges that pursuant s 24A of the Construction Contracts Act 2002, 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:

- (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and
- (iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.

(2) if the Contractor suspends work pursuant s 24A of the Construction Contracts Act 2002, 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.

(3) if the Contractor exercises the right to suspend work pursuant s 24A of the Construction Contracts Act 2002, the exercise of that right does not:

- (i) affect any rights that would otherwise have been available to the Contractor under the Contractual Remedies Act 1979; 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 the Contractor suspending work under this provision.

## 25. Retentions

25.1 This clause is additional to ss 18A – 18Q of the Construction Contracts Act 2002 and any other provisions of the Construction Contracts Act 2002 relating to retention monies.

25.2 Any failure or refusal by the Client to comply with s 18FD of the Construction Contracts Act 2002 will be a breach of these terms and conditions and a default of the agreement by the Client, and will entitle the Contractor to immediately suspend the supply of all Goods.

25.3 If the Client holds any retentions, they must be released as follows:

- (1) 50% on completion of the provision by the Contractor of all Goods;
- (2) 50% six calendar months following completion of the provision by the Contractor of all Goods.

## 26. General

26.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.

26.2 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 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.

26.4 The Client agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide Goods to the Client.

26.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

V26.1