

1. Definitions:

- 1.1. "Seller", "We", "us" and "our" shall mean Paul Newcombe Electrical Ltd. its successors and assigns, or any person acting on behalf of and with the authority of Paul Newcombe Electrical Ltd.
- 1.2. "Client", "You" and "Your" shall mean, the client or any other person acting on behalf of and with the authority of the client, as described on any quotation, work authorisation or other form as provided by the Seller to the Client.
- 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the client on a principal debtor basis.
- 1.4. The terms "materials" and "Goods" shall be interchangeable for the other, where the context so permits and shall mean Goods and Products supplied by the Seller to the Client (and where the context so permits shall include any supply of services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.5. The terms "Works" and "Services" shall be interchangeable for the other where the context so permits and shall mean all services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6. "Price", "materials", "costs", "vehicle", "labour", "travel", "COC's" (certificate of compliance), "ESC" (Electrical Safety Certificate), shall mean the price payable for the Goods as agreed between the Seller and the Client in accordance with clause 3 of this contract.

2. Acceptance

- 2.1. Any instructions received by the Seller from the Client for the supply of Goods and/or the Clients acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Client has entered into the agreement, the clients shall be jointly and severally liable for all the payments of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 2.4. The Client shall give the Seller not less than fourteen days (14) days prior to written notice of any proposed change of ownership of the Client's or any change in the Clients' name and/or details (including but not limited to, changes in the Clients' address, facsimile number, telephone number, email address or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Clients failure to comply with this clause.

3. Electronic Transactions Act 2002

- 3.1. 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 the Act or any Regulations referred to in that Act.

4. Change in Control

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

5. Authorised Representatives

- 5.1. Unless otherwise limited as per clause 5.2 the Client agrees that should the client introduce a third party to the Seller as the Clients' duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods/Materials or Works on the Clients' behalf and/or to request any variation to the Works on the Clients behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Seller in writing that said person is no longer the Clients' duly authorised representative).

- 5.2. In the event that the Clients' duly authorised representative as per clause 5.1 is to have only limited authority to act on the Clients' behalf then the Client must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 5.3. The Client specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Sellers' profit margin) in providing any Works, Goods, Materials or variation/s requested by the Clients' duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. Price and Payment

- 6.1. At the Sellers sole discretion the Price shall be either:
- 6.1.1. as indicated on invoices provided by the Seller to the Client in respect to Goods supplied, or
 - 6.1.2. the Sellers quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Client shall accept the Sellers quotation in writing within thirty (30) days.
- 6.2. The Seller reserves the right to change the Price in the event of a variation to the Sellers quotation. Any variation from the plan of scheduled works or specifications (including and not limited to any variations as a result of additional or altered work due to the inaccessibility or non-compliance of existing wiring, or as a result of increases to the Sellers in the cost of Goods and labour). will be charged on the basis of the Sellers quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 6.3. At the Sellers' sole discretion a deposit may be required
- 6.4. At the Sellers' sole discretion:
- 6.4.1. payment shall be due on delivery of the Goods, or
 - 6.4.2. payment shall be due before delivery of the Goods, or
 - 6.4.3. payment for approved Clients shall be made by instalments in accordance with the Sellers' payment schedule, or
 - 6.4.4. payment for all Clients shall be due either twenty (20) days of the month following the date of invoice or within 7 days from the date of invoice, whichever is stated on the invoice.
- 6.5. The invoice shall be posted or emailed to the Clients address, or address for notices.
- 6.6. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 6.7. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 6.8. A surcharge of up to 3% of the invoice value on any payment made by credit card.
- 6.9. Payment shall be due of default penalty interest on any outstanding amount owed after the due date at the rate of 5% per month.
- 6.10. The Client may not deduct, set off or withhold any amount from any money owed to the Seller, other than as agreed as prior approved retentions as per Construction Contracts Act 2002

7. Delivery of Goods and Services

- 7.1. At the Sellers' sole discretion delivery of the Goods shall take place when:
- 7.1.1. the Client takes possession of the Goods at the Sellers' address, or
 - 7.1.2. the Client takes possession of the Goods at the Clients nominated address, (in the event that the Goods are delivered by the Seller, or the Sellers' nominated carrier), or
 - 7.1.3. the Clients nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Clients agent.
- 7.2. At the Sellers' sole discretion the costs of delivery are:
- 7.2.1. included in the Price, or
 - 7.2.2. in addition to the Price, or
 - 7.2.3. for the Clients' account
- 7.3. The Client shall make all arrangements necessary to take delivery 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 Seller shall be entitled to charge a reasonable fee for delivery.
- 7.4. Subject to clause 4.5 it is the Sellers responsibility to ensure that the works start as soon as it is reasonable possible.
- 7.5. The works commencement date will be put back and the duration of the works extended by whatever time is reasonable in the event that the Seller claims an extension time (by giving the Client written notice) where completion is delayed by an event or beyond the Sellers control including but not limited to any failure by the Client to:

- 7.5.1. make a selection; or
- 7.5.2. have the site ready for installation; or
- 7.5.3. notify the Seller that the nominated job site is ready.
- 7.6. The Seller may deliver by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.7. The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 7.8. Any time or date given by the Seller to the Client is an estimate only. The Seller shall not be liable for any loss or damage whatever, due to failure by the Seller to deliver the Goods (or any part of them) promptly or at all, where due to circumstances beyond the control of the seller.

8. Risk

- 8.1. If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the client on delivery.
- 8.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Sellers' rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

9. Accuracy of Client's Plans and Measurements

- 9.1. The Seller shall be 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, the Seller accepts no responsibility for any loss, damages or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2. In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

10. Access

- 10.1. The Client shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the Works. The Seller shall not be liable for any loss or damage to the site (including without limitation, damage to pathways, driveways and concreted, paved or grassed areas) unless due to negligence of the seller.

11. Hidden Works

- 11.1. Prior to the Seller commencing any work the Client must advise the Seller of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be onsite.
- 11.2. Whilst the Seller will take all care to avoid damage to any underground services the Client agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1

12. Compliance with Laws

- 12.1. The Client and Seller 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.
- 12.2. The Client shall obtain (at the expense of the Client) all licences and approvals that may be required for the Works.
- 12.3. All work will be tested to ensure that it is electrically safe and in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand wiring standards.
- 12.4. If during the course of the installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Seller, then the seller shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety

Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Goods and labour shall be to the Clients account.

- 12.5. Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Sellers Live Works procedures are designed to eliminate risk of injury to the Sellers employees, damage to the Clients' installations and unexpected power connections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 14.2. The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

13. Title

- 13.1. The Seller and Client agree that the ownership of the Goods shall not pass until:
- 13.2. the Client has paid the Seller all amounts owing for the particular Goods, and
- 13.2.1. the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 13.2.2. Receipt by the Seller 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 and until then the Sellers ownership or rights in respect of the Goods shall continue.
- 13.2.3. It is further agreed that:
- 13.2.4. where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and
- 13.3. until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice being given, the rights of the Client to obtain ownership of the Goods or any other interest in the Goods shall cease: and
- 13.4. the Client is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Seller for the Goods, on trust for the Seller, and
- 13.5. until such time that ownership of the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products, and
- 13.6. if the Client fails to return the Goods to the Seller, then the Seller or the Sellers agent may enter upon and into land and premises owned, occupied or used by the Client or any premises where the Goods are situated and take possession of the Goods, and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.

14. Personal Properties Security Act 1999 ("PPSA")

- 14.1. Upon assenting to these terms and conditions in writing the client acknowledges and agrees that:
- 14.1.1. these terms and conditions constitute a security agreement for the purposes of the PPSA, and
- 14.1.2. a security interest is taken in all Goods previously supplied by the Seller to the Client (if any) and all Goods that will be supplied in the future by the Seller to the Client.
- 14.2. The Client undertakes to:
- 14.2.1. 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 Seller may be reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register,
- 14.2.2. indemnify, and upon demand reimburse, the Seller 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,
- 14.2.3. not register a financing change statement or a change demand without the prior written consent of the Seller, and
- 14.2.4. immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of the proceeds derived from such sales.
- 14.3. The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA that shall apply to these terms and conditions.

- 14.4. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5. Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6. The Client shall unconditionally ratify any actions taken by the Seller under clauses 13.1 to 13.5

15. Security and Charge

- 15.1. In consideration of the seller agreeing to supply the Goods, the Client charges all 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) .
- 15.2. The Client indemnifies the Seller and each director of Paul Newcombe Electrical Ltd. from and against all Sellers costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Sellers' rights under this clause.
- 15.3. The Client irrevocably appoints the Seller and each director of Paul Newcombe Electrical Ltd. as the Clients' true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause, including but not limited to, signing any document on the Clients behalf.

16. Client's Disclaimer

- 16.1. The Client hereby disclaims any right to rescind or cancel any contract with the Seller or to sue for damages, or to claim restitution arising out of any misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Clients skill and judgement.

17. Defects Errors and Omissions

- 17.1. The Client shall inspect the Works on completion (or Goods on delivery) and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way.
- 17.2. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.
- 17.3. For the defective Goods, which the Sellers' liability is limited to either (at the sellers discretion) replacing the Goods or repairing the Goods. For defective Works, which the Seller has agreed in writing that the Client is entitled to reject. The Sellers' liability is limited to either (at the Sellers discretion) replacing the Works, rectifying the Works or repairing the Goods.

18. Returns

- 18.1. Returns will only be accepted provided that:
- 18.1.1. the Client has complied with the provisions of clause 16; and
 - 18.1.2. the seller has agreed in writing to accept the return of the Goods; and
 - 18.1.3. the Goods are returned at the Clients cost within seven (7) days of the delivery date; and
 - 18.1.4. the seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - 18.1.5. the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new a condition as is reasonably possible in the circumstances.
- 18.2. The Seller may (in its' discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.
- 18.3. Non-stockist items or Goods made to the Clients specifications are under no circumstances acceptable for credit or return.
- 18.4. Returned Goods may (at the Sellers sole discretion) incur restocking and handling fees.

19. Warranty

- 19.1. Subject to the conditions of warranty set out in clause 18.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller with in (three) 3 months of the date of delivery (time being of the essence) then the Seller will either (at the Sellers sole discretion) replace or remedy the workmanship.

- 19.2. The conditions applicable to the warranty given by clause 18.1 are:
- 19.2.1. The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - 19.2.1.1. failure on part of the Client to properly maintain any Goods, or
 - 19.2.1.2. failure on the part of the Client to follow any instructions or guidelines provided by the seller;
 - 19.2.1.3. Any use or any Goods otherwise than for any application specified on quote or on order form, or
 - 19.2.1.4. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user, or
 - 19.2.1.5. fair wear and tear, any accident or act of God
 - 19.2.2. The warranty shall cease and the seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Sellers consent.
 - 19.2.3. In respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Clients claim.
- 19.3. To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 19.4. For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

20. Consumer Guarantees Act 1993

- 20.1. If the client is acquiring Goods for the purpose of 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 Seller to the Client.

21. Intellectual Property

- 21.1. Where the Seller has designed, drawn or written Works for the Client, then the copyright in those designs and drawings and documents shall remain vested in Paul Newcombe Electrical Ltd. and shall only be used by the Client at the Sellers discretion.
- 21.2. The Client warrants that all designs or instructions to Paul Newcombe Electrical Ltd. will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Clients' order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

22. Default and Consequences of Default

- 22.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 22.2. If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the seller, in pursuing the debt including legal costs for a solicitor and own client basis and the Sellers collection agency costs.
- 22.3. Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the seller has exercised its rights under this clause.
- 22.4. If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 22.5. Without prejudice to the sellers other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller, shall whether or not due for payment, become immediately payable in the event that:

- 22.5.1.any money payable to the Seller becomes overdue, or in the Sellers opinion the Client will be unable to meet its payments and they fall due; or
- 22.5.2.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
- 22.5.3.a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Security and Charge

- 23.1.Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 - 23.1.1.where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Sellers nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller (or the Sellers nominee) shall be entitled to lodge where appropriate, a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - 23.1.2.should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Sellers costs and disbursements including legal costs for a solicitor and own client basis.
 - 23.1.3.the Client and/or Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Sellers nominee as the Clients and/or Guarantors true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 22.1

24. Cancellation

- 24.1.The Seller 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 any sums paid in respect of the Price. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 24.2.In the event that the Client cancels the Works and/or delivery of Goods the Client shall be liable for any loss incurred by the seller (including, but not limited to, any loss or profits) up to the time of cancellation.
- 24.3.Cancellation of orders for Goods made to the Clients' specifications or non-stockist items will definitely not be accepted, once the order has been processed.

25. Dispute Resolution

- 25.1.All disputes and differences between the Client and the seller touching and concerning this agreement shall 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.

26. Privacy Act 1993

- 26.1.The Client and the Guarantor/s (if separate to the Client) authorises the seller to:
 - 26.1.1.collect, retain and use any information about the Client, for the purpose of assessing the Clients credit worthiness or marketing products and services to the Client; and
 - 26.1.2.disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller 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.
- 26.2.Where the Client and/or Guarantors are an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 26.3.The Client and/or Guarantors shall have the right to request the Seller for a copy of the information about the Client and/or Guarantors retained by the Seller to correct any incorrect information about the Client and/or Guarantors held by the Seller.

26.4. Where the Seller has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Client at the Sellers discretion.

26.5. The Client warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Clients order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

27. Unpaid Seller's Rights

27.1. Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and the Seller has not received or been rendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:

27.1.1. a lien on the item;

27.1.2. the right to retain the item for the Price while the Seller is in possession of the item;

27.1.3. a right to sell the item;

27.2. The lien of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained

28. Construction Contracts Act 2002

28.1. The Client hereby expressly acknowledges that:

28.1.1. the Seller 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

28.1.1.1. the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client, or

28.1.1.2. a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not made in full by the due date for its payment; or

28.1.1.3. the client has not complied with an adjudicators notice that the Client must pay an amount to the Seller by a particular date; and

28.1.1.4. the seller has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.

28.1.2. If the Seller suspends work, it:

28.1.2.1. is not in breach of contract; and

28.1.2.2. it is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or any other person claiming through the client; and

28.1.2.3. is entitled to an extension of time to complete the contract, and

28.1.2.4. keeps its rights under the 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 adjudicators' determination has not been complied with.

28.1.3. If the Seller exercises the right to suspend work, the exercise of that right does not:

28.1.3.1. affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or

28.1.3.2. 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 Seller suspending work under this provision.

29. General

29.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legally and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

29.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

29.3. The Seller shall be under no liability whatever to the Client for any indirect loss and/or consequential loss and/or expenses (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.

29.4. In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Works or Goods.

- 29.5. 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 Seller, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 29.6. The Seller may license or sub-contract all or any part of its rights and obligations without the Clients consent.
- 29.7. The Seller reserves the right to review these terms and conditions at any time if, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of any such change.
- 29.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 29.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond reasonable control of either party.
- 29.10. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision nor shall it affect the Sellers right to subsequently enforce that provision.

30. Variations

- 30.1. Variations shall be invoiced at the end of the month in which they were carried out and due for payment as per the payment terms above.