

Terms and Conditions of Trade – Petro Tec Services Limited

1 Definitions

In these terms and conditions of trade:

"Account" means the Customer's account with the Vendor.

"Agreement" means the agreement resulting from the legal contractual relationship created between the parties for the supply of goods and services.

"CACLA" means the Contract and Commercial Law Act 2017.

"Customer" means the person or entity making an Order or any person acting with ostensible authority on behalf of the Customer.

"Delivery" has the meaning given to it in part 3 of the CACLA.

"Force Majeure" has the meaning given to it in clause 38 of these terms and conditions of trade.

"Goods" means goods supplied by the Vendor to the Customer under an Agreement between the parties.

"Guarantor" means any party executing a guarantee of the Customer's Account with the Vendor.

"Order(s)" means a request made by the Customer to the Vendor for the supply of Goods and/or Services.

"Quote" has the meaning given to it in clause 2.2 of these terms and conditions of trade.

"PPSA" means the Personal Property Securities Act 1999.

"Services" means services supplied by the Vendor to the Customer under an Agreement between the parties.

"Vendor" means Petro Tec Services Limited and its subsidiaries.

2 Goods and Services

2.1 Orders will be made on such forms as the Vendor may require from time to time.

2.2 After the Customer has placed its Order, the Vendor may provide the Customer a quote, tender, estimate, or any like document stating the price the Vendor is prepared to provide the Goods and Services or part thereof requested in the Customer's Order ("Quote").

2.3 Upon the Customer's acceptance of the Quote, the Goods and Services specified in the Quote will form the subject matter of the Agreement between the parties subject to these terms and conditions of trade, unless agreed between the parties otherwise in writing.

2.4 Where dates are given for the delivery and/or completion of the Quote, these dates are stated in good faith but are not to be treated as a term of the Agreement.

2.5 If the provision of the Quote is delayed for any reason whatsoever, the Vendor shall not be responsible or liable in any way to the Customer or any other party for any direct or indirect loss sustained due to such delay. Delay or failure to deliver by a set date does not entitle the Customer to cancel any Agreement or part thereof.

2.6 The Customer may order variations to the Quote in writing or may request the Vendor to submit proposals for variations of the Quote at any time. If the Vendor accepts the variations they will be included as part of the Quote for the purpose of this Agreement.

2.7 No modification, alteration of or variation in any way to this Agreement will be binding on the parties unless it is in writing and signed or acknowledged in writing by each of the parties.

2.8 The price for the variation will be added or deducted to or from the price of the Quote as the case may be.

2.9 In providing the Goods and Services included in the Quote, should the Vendor encounter unforeseen or hidden problems or unsuitable conditions (including but not limited to problems underground, behind wall or roof space, under the floor, or worn, damaged or corroded fittings), the Vendor shall contact the Customer forthwith and provide the Customer with an estimate of further costs to complete the Quote. The Customer shall then have the option of accepting the further costs, or terminating the Agreement and paying to the Vendor all costs incurred to the date of termination.

3 Acceptance

Each Order submitted whether personally or electronically shall constitute acceptance by the Customer of these terms and conditions of trade, irrespective of execution in writing or not.

4 Prices

Prices for Services are subject to change without notice unless quoted in writing as fixed price. All Goods and Service will be charged at prices prevailing at the date of delivery or completion.

5 Delivery

5.1 Where a Quote makes provision for delivery, delivery will be made to the place stated in the Quote. If no place is indicated then delivery will be made to the physical address of the Customer set out in their Order.

5.2 If the Customer is not in a position to accept or take delivery of the Goods or accept provision of the Services as scheduled the Customer will be responsible for all additional charges caused thereby, including storage.

5.3 The Customer must notify the Vendor within two working days of delivery of any shortfall in Goods supplied, time being of the essence.

6 Access for Installation and Provision of Services

6.1 The Customer shall provide for the purposes of installation and provision of Services at no cost to the Vendor, all necessary facilities including power, lighting, unloading, hoisting and lifting facilities, labour, site preparation and employee amenities which comply with the statutory requirements.

6.2 Upon the Vendor delivering Goods or providing Services to the Customer, the Customer shall ensure adequate safe storage facilities are provided for protection against theft and damage of the Goods or any equipment or other items belonging to the Vendor at the Customer's expense.

6.3 The Customer acknowledges that it shall solely be responsible for arranging and providing convenient access for the provision of Goods and Services to the proposed place of installation including but not limited to access thereto by way of stairs, lift, crane or roads as the case may require.

6.4 If the Customer fails to supply convenient access as aforesaid for any reason then the Vendor may make a further charge to the Customer to cover the additional costs incurred arising from such failure as the Vendor considers reasonable.

6.5 Where installation or supply of the Goods or provision of the Services is required of the Vendor by the Customer and installation or supply is required to be co-ordinated with other trades the Customer shall provide the Vendor with a schedule detailing all relevant information relating to installation or supply with sufficient time allowed for the Vendor to meet delivery or supply dates.

6.6 The delivery or supply period shall be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond the Vendor's control, including Force Majeure.

7 Health and Safety at Work Act 2015

The Vendor shall only be responsible for the actions of its employees or contractors to the extent prescribed by the Health and Safety at Work Act 2015 ("HSAWA"). The Customer shall be responsible for compliance with the HSEA in respect of the Customer's site unless specified in writing otherwise and shall advise the Vendor prior to commencement of any work of any present or foreseeable hazards on the Customer's site.

8 Time for Performances

Time shall in no case be of the essence in respect of the delivery of Goods or the provision of Services unless specifically warranted in writing otherwise. The Vendor shall not be responsible for any delay in the delivery of Goods or the provision of Services and the Customer shall not be entitled to cancel an Agreement because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a term or condition of the Agreement.

9 Terms of Payment

9.1 Unless otherwise specified, payment for all Goods and Services under the Agreement shall be made:

- (a) on supply of Goods and Services for natural persons; or
- (b) no later than the 20th day of the month following supply for commercial entities; and
- (c) progress payments claimed under the Construction Contracts Act 2002 shall be made no later than 20 days after a payment claim is served on the Customer.

9.2 The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order.

9.3 An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.

9.4 Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a daily basis until payment is made in full.

9.5 All costs of or incurred by the Vendor as a result of a default by the Customer including but not limited to administration charges, debt collections costs and legal costs as between solicitor and client shall be payable by the Customer.

9.6 If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be liquidated or if a resolution is passed or proceedings are filed for the liquidation of the Customer or if a receiver is appointed for all or any assets of the Customer, the Vendor may cancel any Agreement without prejudice to any other rights it may have and payment for all Goods supplied and Services rendered to date shall immediately become due.

10 Quotation

Unless otherwise specified, where a Quote is given by the Vendor for the supply of Goods and Services:

- (a) the quotation will be valid for thirty (30) days from the date of issue;
- (b) the Vendor reserves the right to alter the quotation because:
 - (i) the Customer requests variations to the supply of Goods and Services; and/or
 - (ii) of any Force Majeure.

11 Taxes and Duties

Unless expressly included in any Quote provided by the Vendor, Goods and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Goods and Services to the Customer are not included in the price and shall be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Vendor at law, the price shall be increased by the amount of such taxes or duties.

12 Payment Allocation

The Vendor may in its discretion allocate any payment received from the Customer towards any invoice that the Vendor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Vendor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Vendor, payment shall be deemed to be allocated in such manner as preserves the maximum value of the Vendors purchase money security interest in the products.

13 Errors or Omissions

Clerical errors or omissions, whether in computation or otherwise in the Quote, acknowledgement or invoice shall be subject to correction.

14 Risk

From the time of delivery of the Goods to the Customer by the Vendor, risk in all Goods delivered shall pass to the Customer and any loss and/or damage shall be borne by the Customer. The Customer shall notwithstanding any loss, damage or deterioration of the Goods remain liable to pay for the Goods.

15 Ownership

15.1 The Vendor will retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for any Agreement between the parties.

15.2 If any of the Goods are attached, fixed or incorporated in or used as material for other goods before payment is made, ownership in the whole of the other goods will be and will remain with the Vendor until payment is made. Any Security Interest the Vendor has in the Goods will continue in the terms of section 82 of the PPSA.

15.3 The Vendor will have a right to stop and retrieve the Goods in transit whether or not ownership has passed.

15.4 Until payment is made by the Customer, the Customer agrees:

- (a) to enable the Goods to be readily identifiable as the property of the Vendor;
- (b) to hold the Goods as trustee for the Vendor and will deal with the Goods as agent for and on behalf of the Vendor (but will not hold the Customer out as an agent of the Vendor to any third parties);
- (c) that if the Goods are re-sold, the proceeds of re-sale will belong to the Vendor and the Customer will keep the proceeds of sale in a separate account for which separate records are kept. Any shortfall the Customer makes in repaying their Account will remain the liability of the Customer.

16 Merger with Other Goods

If the Goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title

to the Goods shall remain with the Vendor until the Customer has made payment for all Goods and Services rendered but where those Goods supplied are mixed with other property so as to be part of or constituent of any new goods, title to those new goods shall be deemed to be assigned to the Vendor as security for the full satisfaction by the Customer of the full amount owing by the Customer to the Vendor.

17 Export Prohibition

17.1 Any Goods provided pursuant to these terms and conditions of trade are sold for use in New Zealand only and are not to be exported elsewhere, directly or indirectly, without prior written agreement of the Vendor.

17.2 In the event that the Vendor consents to the export of the Goods the Customer is responsible for all costs and compliance with any export regulations in force locally or within the country for which the Goods are destined.

18 Recovery of Goods

18.1 In the event of non-payment or if payment of the Customer's Account is overdue the Vendor shall be irrevocably entitled without prejudice to any right it has at law or in equity to enter the place where the Goods are stored whether the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.

18.2 The Customer warrants and represents to the Vendor that where the Goods are stored on the premises or property of a third party the Customer is acting as agent for the third party and has the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Goods supplied without releasing the Customer from liability.

18.3 The Vendor will not be responsible for any damage reasonably caused in the course of removal of Goods supplied either in the possession of the Customer or a third party and the Customer indemnifies the Vendor to the full extent in respect of damage caused in the course of removal from the property of a third party.

18.4 The Vendor may resell the Goods and apply the proceeds towards payment of the Customer's outstanding Account with the Vendor. Any shortfall will remain the liability of the Customer. The Customer indemnifies the Vendor for all costs and expenses including legal costs as between solicitor and client which the Vendor may incur in recovering the Goods and any monies owed to it.

19 Warranties

19.1 Unless otherwise specified in writing, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods and Services.

19.2 Where applicable, manufacturer's warranties will attach to the Goods.

19.3 To the extent the Consumer Guarantees Act 1993 applies the Customer shall have all the rights and remedies provided under this Act but no others. The Customer warrants and represents that any Order for Goods and Services by the Customer are for the purposes of its business and the Consumer Guarantees Act 1993 does not apply to the supply of those Goods and Services, unless otherwise specified in writing.

19.4 Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Quote, the Vendor will at its discretion replace or repair any faulty Goods or pay the cost of replacing them, but only if a claim is made by the Customer within seven days of delivery of the Goods time being of the essence.

20 Compliance

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation operation and provision of the Goods and Services.

21 Cancellation and Returns

21.1 The Customer shall not be entitled to cancel the Agreement other than as allowed pursuant to these terms and conditions of trade.

21.2 The Customer will not be entitled to cancel the Agreement or return Goods other than as allowed pursuant to these terms and conditions of trade. Acceptance of any returns requested by the Customer to the Vendor of Goods supplied will be at the Vendor's discretion who must first be notified in writing by the Customer within three days of delivery of the Goods of the Customer's intention to return the Goods and explain why they wish to do so. If a return is agreed to by the Vendor, the Goods must be returned in an unused condition. The Customer shall be liable for all freight and restocking fees incurred.

22 Personal Property Securities Act 1999

22.1 The Customer acknowledges that these terms and conditions of trade constitute a security agreement which creates a security interest in favour of the Vendor in all Goods previously supplied by the Vendor to the Customer (if any).

22.2 The Customer acknowledges and agrees that by accepting a Quote the Customer grants a security interest (by virtue of clause 15 of these terms and conditions of trade) to the Vendor in all Goods supplied by the Vendor to the Customer pursuant to that Quote and any subsequent supplies of Goods to the Customer notwithstanding anything in writing to the contrary contained in the Quote and that such security interest may be a Purchase Money Security Interest as defined in the PPSA.

22.3 The Customer grants to the Vendor a Security Interest in all of the Customer's present and after-acquired property that the Vendor has performed services on or to or in which Goods or materials supplied or financed by the Vendor have been attached or incorporated

22.4 The Customer undertakes:

- (a) to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to enable registration of financing statements or financing change statements on the Personal Property Securities Register ("PPSR");
- (b) not to register a financing change statement as defined in section 135 of the PPSA or make a demand to alter a financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor;
- (c) to give the Vendor not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address; trading name or business practice);
- (d) to pay all costs incurred by the Vendor in registering and maintaining any financing statement (including registering a financing change statement) on the PPSA and/or enforcing or attempting to enforce any security interest created by these terms and conditions of trade including executing subordination agreements;

- (e) to be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA; and
- (f) to waive any rights it may have under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

23.5 Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.

23.6 To the maximum extent permitted by law, the Customer waives its rights and, with the Vendor's agreement, contracts out of its rights under sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA.

23.7 The Customer agrees that nothing in section 114(1)(a), 133 and 134 of the PPSA will apply to these terms and conditions of trade, and, with the Vendor's agreement, contracts out of such sections.

23.8 The Customer and the Vendor agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as the Vendor is not the secured party with priority over all other secured parties in respect of those Goods and Services.

23.9 The Customer agrees that immediately on request by the Vendor the Customer will procure from any third parties such agreement and waivers as the Vendor may at any time require to protect the Vendor's security interest.

24 Events of Default

All payments shall become immediately due to the Vendor and the Vendor may at its option suspend or terminate these terms and conditions of trade and/or exercise any of the remedies available to it under these terms and conditions of trade in the event that:

- (a) a receiver is appointed over any of the assets or undertakings of the Customer
- (b) an application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;
- (c) the Customer goes into voluntary liquidation, amalgamates with another company or acquires its own shares in accordance with the Companies Act 1993;
- (d) the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
- (e) the Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993; or commits any act of bankruptcy.

25 Authority to Sell Goods and Services Supplied

Notwithstanding that title in all Goods supplied under any Agreement that is yet to be paid for are retained by the Vendor, the Customer is authorised to sell the Goods in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory; or the Customer is in default in the performance of its obligations to the Vendor; and shall be deemed automatically revoked if the Customer commits any act of bankruptcy or any act which would render it liable to be liquidated; or if a resolution is passed or proceedings are filed for the liquidation or bankruptcy of the Customer or a receiver is appointed for all or any assets of the Customer.

26 Sale of Goods and Services Supplied

26.1 Where Goods and Services in respect of which property has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.

26.2 Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of the proceeds of sale.

26.3 Where any payments are made from the Customer's bank account otherwise than to the Vendor, payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.

26.4 The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods and Services supplied to the Customer.

27 Security/Guarantee

27.1 Without prejudice to such other rights as the Vendor may have pursuant to these terms and conditions of trade, the Vendor reserves the right to request from the Customer such security as the Vendor may from time to time think desirable to secure all sums due to the Vendor and may refuse to supply further Goods and Services to the Customer until such security is given.

27.2 If the Customer is a company or trust, the director(s) or trustee(s) signing this Agreement, in consideration for the Vendor agreeing to supply the Goods and Services and/or any credit granted to the Customer, may also be required to sign the Agreement in their personal capacity, and jointly and severally personally guarantee as principal debtors ("Guarantors") to the Vendor the payment of any and all moneys now or hereafter owed by the Customer to the Vendor.

27.3 Any personal liability of a Guarantor shall not exclude the Customer in any way whatsoever from the liabilities and obligations under the Agreement.

28 Liability

28.1 The Vendor's liability to the Customer shall be limited to the value of the Quote supplied.

28.2 The CACLA, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or limited. In respect of any such implied warranties, conditions or terms imposed on the Vendor, the Vendor's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

28.3 Except as otherwise provided in these terms and conditions of trade or expressed and agreed to in writing by the parties, the Vendor shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by the Vendor to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise, and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by the Vendor to the Customer.

28.4 The Customer shall indemnify the Vendor against all claims and loss of any kind whatsoever, no matter its cause or rising and without limiting the generality of the foregoing clause whether caused or arising as a result of the negligence of the Vendor or

- otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor, its agents or employees in connection with the Goods and Services.
- 28.5 The Vendor does not accept any liability whatsoever for loss or damage resulting from defects in designs prepared by any third party, including its subcontractors. Any such defects discovered by the Vendor will be brought to the attention of the Customer forthwith. If the Customer then chooses to proceed with a defective design the Customer shall confirm the same in writing and indemnify the Vendor against any loss or liability. The Vendor shall be entitled to cease the provision of Goods and Services until such time as the requested indemnity is provided by the Customer in writing.
- 28.6 Should the Vendor be asked to incorporate any new, used or second hand products the Customer acknowledges that no warranty is given as to the quality or suitability for any purpose of the products before, during or after installation.
- 29 Copyright And Intellectual Property**
- 29.1 Unless it is specifically agreed in writing to the contrary, the Vendor retains all intellectual property rights, including copyright, patents, registered designs, and all protection of confidential information in respect of any Goods and Services provided by the Vendor for/to the Customer.
- 29.2 The Customer will at all times keep the Vendor advised of any infringement or potential infringement by a third party of the Vendor's intellectual property rights.
- 29.3 The Customer will immediately advise the Vendor of any alleged infringement by the Vendor of a third party's intellectual property rights. The Customer will indemnify and hold harmless the Vendor against any losses, costs, actions or liabilities suffered or incurred as a consequence of such infringement or alleged infringement.
- 29.4 The Vendor owns and has copyright in all designs, specifications, documents, and software produced by the Vendor in connection with the Goods provided pursuant to these terms and conditions of trade and the Customer may use the Goods only if paid for in full and for the purpose for which they were intended and supplied by the Vendor.
- 30 Construction Contracts Act 2002**
- 30.1 All Agreements that fit within the meaning of a Construction Contract pursuant to section 5 of the Construction Contracts Act 2002 ("CCA") are subject to the CCA and this clause.
- 30.2 The Customer acknowledges that the Vendor is entitled to progress payments in accordance with sections 16 and 17 of the CCA and will make payment on the due date for payment as defined in section 18 of the CCA.
- 30.3 The Vendor retains the right to claim under the CCA by submitting a payment claim as defined in the CCA, in writing, identifying the contract, identifying the item, the period to which it relates, the amount claimed, when it is due to be paid and detailing how the claim is calculated.
- 30.4 Any payment schedule the Customer wishes to serve in response to 30.2 and/or 30.3 must be served within ten (10) working days from when the payment claim was served.
- 30.5 If retentions form part of the Agreement, the Customer holds retentions on trust, and must provide proof of this on request by the Vendor.
- 30.6 The Customer hereby expressly acknowledges that the Vendor has the right to suspend work within five (5) working days of written notice of the Vendor's intent to do so if:
- the Customer has been served a payment claim and is yet to make payment to in full before the due date for payment and no payment schedule has been received from the Customer in response; or
 - a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - the Customer has not complied with an adjudicator's notice issued pursuant to the CCA;
- provided the Vendor has first given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- 30.7 If the Vendor suspends work under clause 30.6, the Customer acknowledges that the Vendor is:
- not in breach of the contract;
 - not liable for any loss or damage whatsoever incurred by the Customer or by any person claiming through the Customer;
 - entitled to an extension of time to complete the contract;
 - entitled to retain its rights under the contract including the right to terminate the contract; and
 - entitled at any time to lift the suspension, even if an amount owing has not been received or an adjudicator's determination is still yet to be complied with.
- 30.8 If the Vendor exercises the right to suspend work under clause 30.6, the exercise of that right does not:
- affect any rights that would otherwise have been available to the Vendor under the CCA; or
 - enable the customer to exercise any rights that may otherwise have been available to the customer under that Act as a direct consequence of the Vendor suspending work under this provision.
- 30.9 In the event of a dispute regarding a payment claim the parties may resolve the matter using the binding fast track process in Part 3 of the CCA.
- 31 Suitability of Goods and Services**
- The Customer must satisfy itself that the Goods and Services stated in the Quote are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representations and expressly negates any implied or expressed condition that the Goods and Services will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods and Services whether singularly or in combination with other Goods and Services.
- 32 Dimensions and Specifications**
- 32.1 Dimensions and specifications contained or referred to in any estimate, catalogues brochure or other publication maintained or issued by the Vendor are estimates only.
- 32.2 Unless otherwise expressly agreed in writing, it is not a condition of these terms and conditions of trade that the Goods and Services will correspond precisely with such dimensions and specifications and customary tolerances or in the absence of customary tolerances, reasonable tolerances shall be allowed.
- 33 Assignment**
- 33.1 The Customer shall not assign all or any of its rights or obligations under this Agreement without the written consent of the Vendor.
- 33.2 The Vendor is entitled at any time to assign to any other party all or any part of a debt which is owing to the Vendor.
- 33.3 The Vendor may also assign or sub-contract any part of the work which is to be performed under any Agreement.
- 33.4 In respect of any assignment by the Vendor pursuant to this clause, the assignee shall be entitled to the full rights of the Vendor.
- 34 Disputes**
- 34.1 If either party considers that there is a dispute arising out of or in connection with this Agreement then that party shall give notice in writing to the other party or parties including details of the dispute and request that the dispute be resolved in accordance with clause 34(b).
- 34.2 Upon receiving notice of a dispute, both parties agree that they will negotiate in good faith to resolve the dispute prior to resorting to other means of dispute resolution contained in 34(c).
- 34.3 Any dispute that is unable to be settled under 34(b) within ten (10) working days from the notice of dispute being received by the recipient, may be resolved by any other means of dispute resolution including, mediation, arbitration, adjudication or litigation as the case may be.
- 34.4 The preceding clauses do not prejudice either party's rights to seek injunctive and/or interlocutory relief in the event of a dispute arising out of or in connection to this Agreement
- 35 Notices**
- All notices required or committed under these terms and conditions of trade are to be served as provided in sections 353, 359, 360 and 361 of the Property Law Act 2007 and section 387 of the Companies Act 1993, or by facsimile, in which case notice is deemed to be given the day after sending.
- 36 Validity**
- If any provision or part of it, contained in these terms and conditions of trade and or Agreement shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions or part thereof shall not be affected, prejudiced or impaired.
- 37 Changes of General Terms and Conditions**
- 37.1 The Vendor may at any time refuse an Order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- 37.2 The existence of an account by the Customer with the Vendor does not automatically entitle the Customer to credit in the future.
- 37.3 Failure by the Vendor to enforce any of the terms and conditions shall not be deemed to be a waiver of any of the rights or obligations the Vendor has.
- 37.4 The Vendor may from time to time by written notice to the Customer amend, add to or repeal these terms and conditions of trade or may substitute any fresh trading conditions or terms and such amendment, addition or substitute trading conditions or terms shall be binding on the Customer fourteen days after the date of delivery of the notice.
- 38 Force Majeure**
- Neither the Vendor nor the Customer will be liable to the other for any breach of an Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.
- 39 Privacy**
- 39.1 The Vendor may collect private information about the Customer for the purpose of providing the Goods and Services. This information will be treated as private and confidential and will not be disclosed to any third party unless:
- the Vendor is required to do so by law; or
 - it is necessary to do so in order to provide the Goods and Services to you; or
 - you have requested or consented to disclosure.
- 39.2 Notwithstanding 39.1, the Customer agrees to disclosure of their/its personal information to third parties for the purpose of performing a credit check or for recovering any monies owing from the Customer to the Vendor. This may include disclosure of personal information to a debt recovery agency or to the Vendor's nominated lawyers.
- 39.3 At any time the Customer may request to see and/or alter personal information held by the Vendor about them and the Vendor will comply with this request.
- 40 Electronic Communications**
- If the Customer has provided the Vendor with an email address for communication purposes the Vendor will fully comply with all requirements under the Unsolicited Electronic Messages Act 2007.
- 41 Entire Agreement**
- These terms and conditions of trade together with the Quote and any other written agreement between the parties will constitute the entire Agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer.
- 42 Other Agreements**
- If there is inconsistency between these terms and conditions of trade and any Quote agreed to by the Customer or any other arrangement between the Vendor and Customer, these terms and conditions of trade prevail unless otherwise agreed in writing by the parties.
- 43 Governing Law**
- These terms and conditions of trade will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.
- 44 Acknowledgement**
- The Customer acknowledges that it has received a copy of these terms and conditions of trade. Acceptance of the Quote, whether by signature, email or any other form of acceptance, including verbal acceptance, deems that the Customer accepts these terms and conditions of trade issued by the Vendor. The Customer further acknowledges that it has been advised it should seek independent legal advice proceeding with this Agreement and accepting any Quote or placing any Order. This is the Customer's responsibility alone and if this advice is not taken then the Customer acknowledges it has waived this right.