

EKG Projects Limited T/A EKG – Terms & Conditions of Trade

1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"EKG"** means EKG Projects Limited T/A EKG, its successors and assigns or any person acting on behalf of and with the authority of EKG EKG Projects Limited T/A EKG.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting EKG to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods or Services supplied by EKG to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between EKG and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with EKG and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, EKG reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 These terms and conditions may be meant to be read in conjunction with EKG's Hire Form, and:
(a) where the context so permits, the terms 'Services' or 'Goods' shall include any supply of Equipment, as defined therein; and
(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Authorised Representatives

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

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that EKG shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by EKG in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by EKG in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of EKG; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

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

6. Price and Payment

- 6.1 At EKG's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by EKG to the Client; or
(b) EKG's estimated Price, with the final price only being ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to the Client's approval before proceeding with the Services; or
(c) EKG's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of twenty (20) days.
- 6.2 EKG reserves the right to change the Price:
(a) if a variation to the Goods which are to be supplied is requested; or
(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being

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- completed, asbestos or other hazardous substances, change of design, hard rock barriers below the surface or iron reinforcing rods in concrete etc.) which are only discovered on commencement of the Services; or
- (d) in the event of increases to EKG in the cost of labour (including, but not limited to shortage of or additional labour required) or materials and freight costs or due to fluctuations in currency exchange rates, which are beyond EKG's control.
- 6.3 Variations will be charged for on the basis of EKG's quotation, and will be detailed in writing, and shown as variations on EKG's invoice. The Client shall be required to respond to any variation submitted by EKG within ten (10) working days. Failure to do so will entitle EKG to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At EKG's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by EKG, which may be:
- (a) on Delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with EKG's payment schedule, which is:
 - (i) twenty percent (20%) deposit on signing the Contract;
 - (ii) thirty percent (30%) upon approval of final drawings and/or plans specifications;
 - (iii) thirty percent (30%) prior to the cutting of steel; and
 - (iv) final twenty percent (20%) due ten (10) days after completion of the installation of the Goods;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is ten (10) days following the date of any invoice given to the Client by EKG.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 6.7 Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and EKG.
- 6.8 EKG may in its discretion allocate any payment received from the Client towards any invoice that EKG determines and may do so at the time of receipt or at any time afterwards. On any default by the Client EKG may re-allocate any payments previously received and allocated. In the absence of any payment allocation by EKG, payment will be deemed to be allocated in such manner as preserves the maximum value of EKG's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EKG nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by EKG is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to EKG an amount equal to any GST EKG must pay for any supply by EKG under this or any other Contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Provision of the Services**
- 7.1 Subject to clause 7.2 it is EKG's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that EKG claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond EKG's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify EKG that the site is ready.
- 7.3 At EKG's sole discretion the cost of Delivery is included in the Price.
- 7.4 EKG may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by EKG for Delivery of the Goods is an estimate only and EKG will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that EKG is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then EKG shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 8.1 If EKG retains ownership of the Goods under clause 14 then:
- (a) where EKG 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 EKG's address; or
 - (ii) the Goods are delivered by EKG or EKG's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where EKG is to both supply and install Goods then EKG shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests EKG to leave Goods outside EKG'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.
- 8.3 Where EKG is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and EKG shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 8.4 Furthermore, EKG accepts no responsibility for flaws in the design specifications or design plans supplied to EKG by the Client. In the event the Goods manufactured by EKG and supplied to the Client are not fit for the purpose the Goods were designed for EKG shall not be liable unless due to the negligence of EKG.

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- 8.5 EKG shall not be held liable for any costs, losses or damages where there are delays to pre-constructions work not being completed by either third parties or circumstances beyond EKG's control.
- 8.6 The Client acknowledges that:
- (a) stainless steel is a textured material and can be of a porous nature. The Client accepts that products made from this material can rust and mark easily. The Client accepts that care should be taken to maintain the finish of and longevity of stainless steel products;
 - (b) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods; and
 - (c) as timber is a hygroscopic material subject to expansion and contraction, therefore EKG will accept no responsibility for gaps that may appear during prolonged dry periods;
 - (d) any loss or damage to the Services that is caused by any other tradesmen during and/or after the completion of the Services; and
 - (e) Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, markings, veining, and contain natural fissures, occlusions, and indentations, surface and finish, and may fade or change colour over time. EKG 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; and
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
- 9. Accuracy of Client's Plans and Measurements**
- 9.1 EKG 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, EKG 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 Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or EKG places an order based on these measurements and quantities. EKG accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 10. Specifications**
- 10.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in EKG'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 EKG; and
 - (b) while EKG may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that EKG has given these in good faith, and are estimates.
- 10.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 10.3 EKG reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases EKG will notify the Client in advance of any such substitution.
- 11. Access**
- 11.1 The Client shall ensure that EKG has clear and free access to the work site at all times to enable them to undertake the works. EKG 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 EKG.
- 12. Underground Locations**
- 12.1 Prior to EKG commencing any work the Client must advise EKG 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, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst EKG will take all care to avoid damage to any underground services the Client agrees to indemnify EKG in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.
- 13. Compliance with Laws**
- 13.1 The Client and EKG 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 and any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") EKG agrees at all times comply with sections 29 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or if in the event that they may be acting as a subcontractor for the Client's where the Client has engaged a third party head contractor.
- 13.3 *Site Inductions*
- (a) in the event the Client requires an employee or sub-contractor of EKG to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction is needed to be undertaken prior to the commencement date then the Client shall be liable to pay EKG's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where EKG is in control of the Site, the Client and/or the Client's third party contractors must initially carry out EKG's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Services will be by **appointment** only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by EKG.
- 13.4 The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Services.
- 14. Title**
- 14.1 EKG and the Client agree that ownership of the Goods shall not pass until:

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- (a) the Client has paid EKG all amounts owing to EKG; and
 - (b) the Client has met all of its other obligations to EKG.
- 14.2 Receipt by EKG 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.
- 14.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to EKG on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for EKG and must pay to EKG the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for EKG and must pay or deliver the proceeds to EKG on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of EKG and must sell, dispose of or return the resulting product to EKG as it so directs;
 - (e) the Client irrevocably authorises EKG to enter any premises where EKG believes the Goods are kept and recover possession of the Goods;
 - (f) EKG may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of EKG;
 - (h) EKG may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 15. Personal Property Securities Act 1999 ("PPSA")**
- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to EKG for Services – that have previously been supplied and that will be supplied in the future by EKG to the Client.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EKG may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, EKG for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of EKG; and
 - (d) immediately advise EKG 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.
- 15.3 EKG and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by EKG, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by EKG under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of EKG 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).
- 16.2 The Client indemnifies EKG from and against all EKG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EKG's rights under this clause.
- 16.3 The Client irrevocably appoints EKG and each director of EKG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Defects, Returns & Warranties**
- 17.1 The Client shall inspect the Goods on Delivery and shall within forty-eight (48) hours of Delivery (time being of the essence) notify EKG of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford EKG an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which EKG has agreed in writing that the Client is entitled to reject, EKG's liability is limited to either (at EKG's discretion) replacing the Goods or repairing the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) EKG has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and
 - (c) EKG will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 EKG will not accept the return of non-defective Goods for credit.
- 17.4 Subject to clause 17.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 17.5 Subject to the conditions of warranty set out in clause 17.6 EKG warrants that if any defect in any workmanship of EKG becomes apparent and is reported to EKG within five (5) years of the date of Delivery (time being of the essence) then EKG will either (at EKG's sole discretion) replace or remedy the workmanship.
- 17.6 The conditions applicable to the warranty given by clause 17.5 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or

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- (ii) failure on the part of the Client to follow any instructions or guidelines provided by EKG; 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.
- (b) the warranty shall cease and EKG shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without EKG's consent.
- (c) in respect of all claims EKG 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.
- 17.7 For Goods not manufactured by EKG, the warranty shall be the current warranty provided by the manufacturer of the Goods. EKG 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.
- 18. Consumer Guarantees Act 1993**
- 18.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by EKG to the Client.
- 19. Intellectual Property**
- 19.1 Where EKG has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of EKG. Under no circumstances may such designs, drawings and documents be used without the express written approval of EKG.
- 19.2 The Client warrants that all designs, specifications or instructions given to EKG will not cause EKG to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify EKG against any action taken by a third party against EKG in respect of any such infringement.
- 19.3 The Client agrees that EKG may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which EKG has created for the Client.
- 20. Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at EKG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes EKG any money the Client shall indemnify EKG from and against all costs and disbursements incurred by EKG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EKG's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies EKG may have under this Contract, if a Client has made payment to EKG, 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 EKG under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to EKG's other remedies at law EKG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EKG shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EKG becomes overdue, or in EKG's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by EKG;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 21. Cancellation**
- 21.1 Without prejudice to any other rights or remedies EKG may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then EKG may suspend the Services immediately. EKG will not be liable to the Client for any loss or damage the Client suffers because EKG has exercised its rights under this clause.
- 21.2 EKG 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 EKG shall repay to the Client any money paid by the Client for the Goods. EKG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by EKG as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 22. Suspension of Services**
- 22.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) EKG 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 in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (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 EKG by a particular date; and
 - (iv) EKG has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if EKG suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and

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- (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if EKG exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to EKG under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of EKG suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes EKG from continuing the Services or performing or complying with EKG's obligations under this Contract, then without prejudice to EKG's other rights and remedies, EKG may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by EKG as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, EKG suspends the Services and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, EKG shall be entitled to terminate the Contract, in accordance with clause 21.
- 23. Insurance**
- 23.1 EKG shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.
- 24. Privacy Policy**
- 24.1 All emails, documents, images or other recorded information held or used by EKG is Personal Information as defined and referred to in clause 24.3 and therefore considered confidential. EKG acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). EKG acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by EKG that may result in serious harm to the Client, EKG will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to EKG in respect of Cookies where transactions for purchases/orders transpire directly from EKG's website. EKG agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to EKG when EKG sends an email to the Client, so EKG may collect and review that information ("collectively Personal Information")In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via EKG's website.
- 24.3 The Client authorises EKG or EKG's agent to:
 - (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by EKG from the Client directly or obtained by EKG 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.
- 24.4 Where the Client is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.5 The Client shall have the right to request EKG for a copy of the Personal Information about the Client retained by EKG and the right to request EKG to correct any incorrect Personal Information about the Client held by EKG.
- 25. Trusts**
- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not EKG may have notice of the Trust, the Client covenants with EKG as follows:
 - (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of EKG (EKG will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 26. General**
- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudicate in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

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- 26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts of New Zealand.
- 26.4 EKG 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 EKG of these terms and conditions (alternatively EKG's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.5 EKG may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of EKG.
- 26.7 EKG may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of EKG's sub-contractors without the authority of EKG.
- 26.8 The Client agrees that EKG may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for EKG to provide Goods to the Client.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.