

Building Safety Solutions Limited – 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 "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 Customer does not wish to allow Cookies to operate in the background when using the Inspector's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Inspector to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Inspector" means Building Safety Solutions Limited, its successors and assigns.
- 1.5 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Inspector and the Customer in accordance with clause 6 below.
- 1.6 "Services" means all Goods (including but not limited to, documents, any evacuation plans formulated to form part of the Services etc) or Services supplied by the Inspector to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods/Services.
- 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 Customer acknowledges and accepts that:
 - (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Inspector and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Inspector reserves the right to refuse Delivery;
 - (c) where certification Services are to be provided, that such certification shall be based on current legislative and industry requirements and the Inspector does not guarantee that should legislation or industry requirements changed, that the certification will still meet the new requirements and/or standards;
 - (d) all alarms that may be triggered through the prescribed tests are to be isolated prior to testing and put back online after completion of the tests by the Customer's security;
 - (e) the hydrant service must be complete in order for the Inspector to carry out testing;
 - (f) all testing will be done to current requirements unless other requirements have been called for by the Customer or other authority with confirmation of the installation date to be provided to the Inspector prior to testing as failure on the Customer's behalf to comply with this clause will ensure that the Inspector will use the current requirements as the benchmark which may differ from past requirements;
 - (g) where the Customer requests or requires a plumber to be present, in addition to the Inspector's technicians, during testing to provide a report on valves and emergency assistance, then it is the Customer's responsibility to advise the Inspector prior to test day and all additional charges shall be invoiced accordingly; and
 - (h) where the Customer requires any specialised testing not covered in the initial quote, after the commencement of the Services, then additional costs shall apply and will be treated as a variation in accordance with clause Error! Reference source not found.
- 2.5 Unless otherwise agreed to, the Services shall be performed during the Inspector's standard office hours of Monday – Friday 8:00am to 5:00pm excluding Public Holidays.
- 2.6 In the event that the Inspector is required to provide the Services urgently, that may require the Inspector's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Inspector reserves the right to charge the Customer a Call Out Fee, additional labour costs (penalty rates will apply), unless otherwise agreed between the Inspector and the Customer.
- 2.7 Where the Inspector gives any advice, recommendation, information, assistance or service provided by the Inspector in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on the Inspector's own knowledge and experience and shall be accepted without liability on the part of the Inspector.
- 2.8 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.
3. **Authorised Representatives**
- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Inspector as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Inspector in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Inspector in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Inspector for all additional costs incurred by the Inspector (including the Inspector's profit margin) in providing any Goods, Services or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
4. **Errors and Omissions**
- 4.1 The Customer acknowledges and accepts that the Inspector shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Inspector 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 the Inspector 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 willful misconduct of the Inspector; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
5. **Change in Control**
- 5.1 The Customer shall give the Inspector not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Inspector as a result of the Customer's failure to comply with this clause.
6. **Price and Payment**
- 6.1 At the Inspector's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Inspector to the Customer; or
 - (b) the Inspector'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 thirty (30) days.
- 6.2 The Inspector 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 to, poor weather conditions, limitations to accessing the site and/or crawl spaces to complete inspection, existing state of components or control board, safety considerations including the discovery of asbestos or synthetic mineral fibres, prerequisite work by any third party not being completed, where additional specialised testing is requested etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Inspector in the cost of labour or materials which are beyond the Inspector's control.
- 6.3 Variations will be charged for on the basis of the Inspector's quotation, and will be detailed in writing, and shown as variations on the Inspector's invoice. The Customer shall be required to respond to any variation submitted by the Inspector within ten (10) working days. Failure to do so will entitle the Inspector 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 the Inspector'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 Customer on the date/s determined by the Inspector, which may be:
 - (a) on or before Delivery of the Goods;
 - (b) on completion of the Services;
 - (c) by way of instalments/progress payments in accordance with the Inspector's payment schedule;
 - (d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Inspector.
- 6.6 Payment may be made by cash, electronic/on-line banking, Ezi Debit, or by any other method as agreed to between the Customer and the Inspector.
- 6.7 The Inspector may in its discretion allocate any payment received from the Customer towards any invoice that the Inspector determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Inspector may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Inspector, payment will be deemed to be allocated in such manner as preserves the maximum value of the Inspector's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Inspector nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Inspector an amount equal to any GST the Inspector must pay for any supply by the Inspector under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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. **Delivery of Goods**
- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Inspector (or the Inspector's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At the Inspector's sole discretion the cost of Delivery is included in the Price.
- 7.3 Any time specified by the Inspector for Delivery of the Goods is an estimate only and the Inspector will not be liable for any loss or damage incurred by the Customer 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 the Inspector is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Inspector shall be entitled to charge a reasonable fee for redelivery and/or storage.
8. **Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Inspector is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Inspector is sufficient evidence of the Inspector's rights to receive the insurance proceeds without the need for any person dealing with the Inspector to make further enquiries.
- 8.3 If the Customer requests the Inspector to leave Goods outside the Inspector's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 The Inspector shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Inspector accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.5 Where the Inspector is required to install the Goods the Customer 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 (including, but not limited to any electrical or plumbing connections) and the Inspector shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.6 In the event that the Inspector discovers asbestos/hazardous materials whilst undertaking any Services the Inspector shall immediately advise the Customer of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Customer shall be liable for all additional costs (howsoever arising) incurred by the Inspector as a result of the discovery of asbestos/hazardous materials and/or any suspension of Services in relation thereto.
- 8.7 The Customer acknowledges and accepts that:
 - (a) during testing, water may cause water or mechanical damage during prescribed testing where system failure occurs. The Inspector shall not be held liable to the Customer, the property owner or other third party for any damages, losses or costs, (including, but not limited to, down time, damage to the fire services(s) and other system(s) connected to or that form part of the hydrant service) resulting from such an event;
 - (b) the Inspector is only responsible for parts that are replaced by the Inspector and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify the Inspector against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
 - (c) electronic systems, smoke, heat and like detectors installed to / at their premises:
 - (i) are for monitoring and detection purposes and should not be seen as a life saving device; and
 - (ii) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.
 - (d) where software or data transmissions are part of the equipment:
 - (i) the Inspector does not guarantee the performance or transmission speed or quality of any data;
 - (ii) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, software applications, servers or networks by third parties; and
 - (iii) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such the Inspector cannot warrant against delays or errors in transmitting data between the Customer and any person or entity the Customer conducts communications with including monitoring data, and you agree that the Inspector will not be liable for any losses which the Customer suffers as a result of delays or errors in transmitting data or other communications and/or documents;
 - (e) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Inspector's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by the Inspector;
 - (f) while the Inspector may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that the Inspector has given these in good faith, and are estimates industry prescribed estimates under optimal operating conditions, and Goods supplied may:
 - (i) fade or change colour over time;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
- 8.8 Where the Customer updates or upgrades any software or hardware that may interface with the Inspector's alarm or monitoring applications without advising the Inspector, the Customer shall indemnify the Inspector of any loss or damage to the Customer's property or possessions may incur as a result of the Customer's failure to advise the Inspector of any such update or upgrade that may affect the effectiveness of the alarm or monitoring.
9. **Customer's Responsibilities**
- 9.1 It shall be the Customer's responsibility:
 - (a) to ensure the system equipment is tested and maintained to full operational condition;
 - (b) for all phone calls or data transmissions emanating from the system panel; and
 - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
- 9.2 The Customer shall (where applicable):
 - (a) provide to the Inspector, any access to information, building permit drawings or system drawings upon request;
 - (b) provide the Inspector with the Water Authority Pressure and Flow letter depending on the Customer's building surveyor's interpretation;
 - (c) ensure there is adequate legal parking within 8 metres (8m) of the booster connections and feed hydrant as traffic cannot drive over hoses spanning between the feed hydrant, pump appliance and booster connections. It would be in the Customer's interest to check the locations of boosters and where the likely supply of water will be sourced from; and
 - (d) where appropriate, arrange traffic and/ pedestrian control. Where the Customer requests the Inspector to make such arrangements, the Customer shall provide the Inspector with at least seven (7) days' notice and the additional charge shall be made as a variation as per clause 6.2.
- 9.3 The Customer shall ensure that the Inspector has clear, free and continuous access to the site at all times to enable them to undertake the Services. The Inspector shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Inspector.
- 9.4 The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Services and agrees that the Inspector shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
10. **Underground Locations**
- 10.1 Prior to the Inspector commencing any work the Customer must advise the Inspector of the precise location of all underground services on the site and clearly mark the same and where necessary "Dial Before You Dig" must be consulted. The underground mains & services the Customer 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. If the Customer requests the Inspector to engage the service locator, then this shall be in addition to the Price.
- 10.2 Whilst the Inspector will take all care to avoid damage to any underground services the Customer agrees to indemnify the Inspector 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 10.1.
11. **Compliance with Laws**
- 11.1 The Customer and the Inspector shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services, including meeting fire safety regulations and standards.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.3 The Customer agrees that the site will comply with any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.
12. **Title**
- 12.1 The Inspector and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Inspector all amounts owing to the Inspector; and
 - (b) the Customer has met all of its other obligations to the Inspector.
- 12.2 Receipt by the Inspector 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.
- 12.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 12.1:

Building Safety Solutions Limited – Terms & Conditions of Trade

- (a) the Customer is only a bailee of the Goods and must return the Goods to the Inspector on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Inspector and must pay to the Inspector the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Inspector and must pay or deliver the proceeds to the Inspector on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Inspector and must sell, dispose of or return the resulting product to the Inspector as it so directs;
- (e) the Customer irrevocably authorises the Inspector to enter any premises where the Inspector believes the Goods are kept and recover possession of the Goods;
- (f) the Inspector may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Inspector; and
- (h) the Inspector may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 Upon assenting to these terms and conditions in writing the Customer 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 that have previously been supplied and that will be supplied in the future by the Inspector, and the proceeds from such Goods.
- 13.2 The Customer 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 the Inspector may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Inspector 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 or the proceeds of such Goods in favour of a third party without the prior written consent of the Inspector; and
- (d) immediately advise the Inspector of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Inspector and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Inspector, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by the Inspector under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of the Inspector agreeing to supply the Goods, the Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 14.2 The Customer indemnifies the Inspector from and against all the Inspector's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Inspector's rights under this clause.
- 14.3 The Customer irrevocably appoints the Inspector and each director of the Inspector as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects and Returns**
- 15.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Inspector of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Inspector an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Inspector has agreed in writing that the Customer is entitled to reject, the Inspector's liability is limited to either (at the Inspector's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) the Inspector has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
- (c) the Inspector 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.
- 15.3 Subject to clause 15.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.
- 16. Warranty**
- 16.1 For Goods not manufactured by the Inspector, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Inspector 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.
- 16.2 To the extent permitted by statute, no warranty is given by the Inspector as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Inspector shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Inspector to the Customer.
- 18. Intellectual Property**
- 18.1 Where the Inspector has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Inspector. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Inspector.
- 18.2 The Customer warrants that all designs, specifications or instructions given to the Inspector will not cause the Inspector to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Inspector against any action taken by a third party against the Inspector in respect of any such infringement.
- 18.3 The Customer agrees that the Inspector may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Inspector has created for the Customer.
- 19. Use of Reports and Advice**
- 19.1 Any advice that the Inspector gives to the Customer, its employees or agents is for the Customer's exclusive use and must be used only for the purpose described in the quotation or any other documentation provided by the Inspector.
- 19.2 Unless the Inspector gives the Customer prior written consent, the advice:
- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Customer's lawyers or other professional advisor assisting in the Services; and
- (b) may not be relied upon by any other party other than the Customer.
- 19.3 The Inspector is not responsible to any other party other than the Customer, who is provided with or obtains a copy of the Inspector's advice.
- 19.4 The Inspector's advice may, on occasion, be given to the Customer in draft form or orally only on the basis that the Customer may not rely on advice in that form. Accordingly, the Inspector shall not be responsible if the Customer or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.
- 19.5 The Customer acknowledges that the signed copy of the Inspector's final advice is the definitive version.
- 19.6 Sometimes circumstances may change after the Inspector has provided their final advice to the Customer. If this happens the Inspector will not update any final advice it has provided to the Customer under these terms and conditions. If the Customer would like the Inspector to update their final advice, they must contact the Inspector and both parties can discuss a suitable agreement with the Customer.
- 20. Confidential Information**
- 20.1 The Customer assumes liability for all loss or damage suffered by the Inspector as a result of breach of confidentiality undertaken by itself, or its employees or agents.
- 20.2 Neither party will use the other party's Confidential Information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this Contract, and a party may only disclose the other party's Confidential Information:
- (a) if required by law;
- (b) to exercise their rights under this Contract;
- (c) if necessary to perform their obligations under this Contract;
- (d) if the other party has provided their written consent to the disclosure; or
- (e) if the Confidential Information is already in the public domain (otherwise than as a result of disclosure in breach of this Contract).
- 20.3 The obligations of confidentiality shall survive the finalisation or discontinuance of any Contract between the Customer and the Inspector.
- 21. Default and Consequences of Default**
- 21.1 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 the Inspector's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes the Inspector any money the Customer shall indemnify the Inspector from and against all costs and disbursements incurred by the Inspector in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Inspector's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies the Inspector may have under this Contract, if a Customer has made payment to the Inspector, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Inspector under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 21.4 Without prejudice to the Inspector's other remedies at law the Inspector shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Inspector shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Inspector becomes overdue, or in the Inspector's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by the Inspector;
- (c) the Customer 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 Customer or any asset of the Customer.
- 22. Cancellation**
- 22.1 Without prejudice to any other remedies the Inspector may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Inspector may suspend or terminate the supply of Goods to the Customer. The Inspector will not be liable to the Customer for any loss or damage the Customer suffers because the Inspector has exercised its rights under this clause.
- 22.2 The Inspector 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 Customer. On giving such notice the Inspector shall repay to the Customer any money paid by the Customer for the Goods. The Inspector shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Inspector as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 23. Privacy Policy**
- 23.1 All emails, documents, images or other recorded information held or used by the Inspector is "Personal Information" as defined and referred to in clause 23.3 and therefore considered confidential. The Inspector acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Inspector acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Inspector that may result in serious harm to the Customer, the Inspector will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Inspector in respect of Cookies where the Customer utilises the Inspector's website to make enquiries. The Inspector 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Inspector when the Inspector sends an email to the Customer, so the Inspector may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Inspector's use of Cookies on the Inspector's website and later wishes to withdraw that consent, the Customer may manage and control the Inspector's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Customer authorises the Inspector or the Inspector's agent to:
- (a) access, collect, retain and use any information about the Customer;
- (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 Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by the Inspector from the Customer directly or obtained by the Inspector 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 Customer.
- 23.4 Where the Customer is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.5 The Customer shall have the right to request (by e-mail) from the Inspector, a copy of the Personal Information about the Customer retained by the Inspector and the right to request that the Inspector correct any incorrect Personal Information.
- 23.6 The Inspector will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.7 The Customer can make a privacy complaint by contacting the Inspector via e-mail. The Inspector will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 24. Service of Notices**
- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**
- 25.1 If the Customer 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 the Inspector may have notice of the Trust, the Customer covenants with the Inspector as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of the Inspector (the Inspector will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer 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 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.
- 26.2 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 Palmerston North Courts of New Zealand.
- 26.3 Subject to the CGA, the Inspector shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Inspector of these terms and conditions (alternatively the Inspector's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.4 The Inspector may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 26.5 The Customer cannot licence or assign without the written approval of the Inspector.
- 26.6 The Inspector 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 Customer agrees and understands that they have no authority to give any instruction to any of the Inspector's sub-contractors without the authority of the Inspector.
- 26.7 The Customer agrees that the Inspector may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Inspector to provide Goods to the Customer.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Inspector.
- 26.9 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.