

PLUMB STUFF NZ LIMITED - GENERAL TERMS AND CONDITIONS

1. CLIENT'S ACKNOWLEDGEMENTS

- 1.1. **A legally binding Contract is established between the two parties** (based on these terms and conditions contained herein) and **deemed accepted** by the Client once the Client placing an order for the supply of the Materials or Works or if the Client accepts delivery of the Materials or Works from the Contractor. In such events, the Client will immediately be bound, jointly and severally, by these terms and conditions.
- 1.2. **No amendment of this Contract will be of any force or effect, unless in writing signed by an authorised representative of each party.**
- 1.3. Both parties declare that they have the power to enter this Contract (at the time of signing this Contract) and have obtained all necessary authorisations to allow them to do so (including where the Client is to act in the capacity as a trustee of any trust ("**Trust**"). The Client declares that they are not insolvent and accepts that this Contract creates a binding and valid legal obligation on them, to meet all their debts as and when they fall due.
- 1.4. If the Client is primarily a Trust entity, the Client declares that the provisions of the Trust does not imply to exclude or remove the right of indemnity of the Client against the Trust. The Client agrees to notify the Contractor forthwith, if there are any substantial changes to the Trust that could affect the business relationship and the Client's obligations under the Contract, such as removal, replacement, or retirement of the Client as a trustee of the Trust, variations or resettlements of trust assets that may or could be the basis of any security under any contract with the Contractor.
- 1.5. The Client acknowledges and accepts that unless any representation, statement, condition, or agreement is **expressed** in writing, by **Plumb Stuff NZ Limited** or its authorised representative, the Contractor **shall not be bound** any such unauthorised statements.
- 1.6. The Contractor acts always, in the best interest of the Client, thereby, any advice, recommendations, information, assistance, or service provided by the Contractor to the Client or the Client's agent/representative, in respect of the Materials or Works is based on the Contractor's knowledge and experience. Where such advice, recommendations are not acted upon, then the Contractor shall require the Client or their agent/representative to authorise commencement of the Works in writing. The Contractor does not accept any liability in any way whatsoever, for any damages or losses that occur, subsequently after the Contractor is instructed to re-commence the Works.
- 1.7. Where the Contractor has been provided with an email address from the Client for e-communications, both parties agree to fully comply with all current requirements by law pertaining to electronic messaging (including but not limited to, Unsolicited Electronic Messages Act 2007).
- 1.8. It is further agreed, where electronic signatures are to form part thereof, the acceptance to this Contract and to be deemed compliant, both parties must consent to same, in accordance 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.
- 1.9. Where the Contractor is to supply a quotation for acceptance that involves estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Contractor's estimated measurements and quantities before the Client places an order based on such estimates and/or accepts such quotation.
- 1.10. **Insurance Claims:** - If the Materials and/or Works provided by the Contractor are the subject of an insurance claim that the Client has made, then the Client acknowledges and accepts the responsibility of payment of any excess due and payable to the insurance company and agrees to honour their obligation for payment when due, for all Works carried out by the Contractor, regardless of whether the insurance claim is successful.

2. CLIENT'S AUTHORISED AGENT/REPRESENTATIVE

- 2.1. Where the Client elects to appoint an authorised agent/representative, the Client thereby acknowledges and accepts that once introduced that person shall have the full authority of the Client to order or request any variation thereto, any Materials and/or Works, on the Client's behalf (such authority shall continue until all requested Materials and/or Works have been delivered and/or completed, or the Client otherwise notifies the Contractor in writing that said person is no longer the Client's authorised agent/representative).
- 2.2. Subject to clause 2.1, if the authorised agent/representative is to have **limited authority imposed by the Client**, then the Client's must serve notice in writing, to the Contractor, detailing the specifically boundaries that apply.
- 2.3. Notwithstanding the conditions of clause 2.2, the Client remains liable for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Materials and/or Works, or variation/s regardless of whether the Client requested the supply directly or the Client's authorised agent/representative.

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3. ERROR AND OMISSIONS

- 3.1. The Contractor shall have no liability, unless attributed to negligence and/or willful misconduct by the Contractor, arising from any typographical, clerical, or other error, mistake or omission in any information, communication or other document or information issued by it.
- 3.2. Furthermore, in providing any services, the Contractor shall exercise the degree of skill, care and diligence normally expected of a competent professional. The Contractor shall not however be responsible for work affected by the requirements of the Client's other trades, architect, or main builder, unless such requirements are specifically shown on any design drawings. While all care is taken to minimise errors in drawings provided by the Contractor from structural, architectural, fabrication and detailed drawings, the Contractor will not be held liable for these errors or any delays attributable to such. The Contractor will provide corrective/amended drawings because of any errors made by the Contractor at no charge, errors by others may incur extra costs.

4. PAYMENT TERMS

- 4.1. At the Contractor's sole discretion, the Price shall be:
 - (a) As indicated on any invoice/s furnished by the Contractor to the Client;
 - (b) If an estimated Price (subject to clause 5) is offered it shall not be deemed binding upon the Contractor as the final Price, as only upon completion of the Works can the final Price be confirmed. In the interest of being fair and reasonable in respect of the pricing with the Client, the Contractor agrees to keep the Client informed, if the Contractor considers the final Price may exceed more than 10% of the original estimate, so the Client can grant approval first before proceeding further; or
 - (c) The Contractor's quoted Price (subject to clause 5) will **only be valid for the period stated in the quotation**, if no date is stated, then the valid period shall be no less than **14 Business Days**.
- 4.2. Deposits due, are at the discretion of the Contractor and the deposit amount may vary due to the nature of the Works or Materials to be supplied. Any deposit required will be stated at the time of quoting and shall become immediately due and payable upon the Contractor's acceptance.
- 4.3. The Price will be payable by the Client on the date determined by the Contractor, which may be: (a) On or before the supply/delivery of the Materials and/or Works; or (b) **Credit Approved Client's**:
 - (i) By instalments in accordance with the Contractors payment schedule; or
 - (ii) 20 Business Days following the end of the month in which a statement is posted/emailed to the Client's address for service; or
- (c) The date specified on any invoice/s or other form as being the date for payment; or
- (d) Failing any notice to the contrary, the due date will be 7 Business Days following the date of any invoice/s furnished by the Contractor to the Client.
- 4.4. Payment is accepted by either electronic bank transfer, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Client and the Contractor.
- 4.5. If this Contract is subject to retention monies ("**Retention Money**") then such funds shall be dealt with in accordance with Subpart 2A – sections 18(a)-18(g) & 18 (i) of the Construction Contracts Act 2002. Retention Money is a set amount or equal to a percentage of the Price and as such, no Retention Money shall be used other than to remedy defects in the performance of the Contractor's obligations under the Contract. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all the Works are to be completed and/or defects are to be remedied.
- 4.6. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Where the Client believes that there has been a mistake made, the Contractor requests that the Client contacts the Contractor within 7 Business Days of receipt of the invoice/statement, so that the Contractor may investigate any alleged error. If a mistake has occurred, the Client's subsequent invoice/statement will be adjusted.
- 4.7. Unless otherwise stated, the Price will always be inclusive of GST. In addition, the Client must pay any other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. VARIATIONS

- 5.1. The Contractor reserves the right to amend the Price (upon written notice to the Client):

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- (a) If a variation to the Works, plans or specifications is requested by the Client (including architects, structural engineers, or any other contractor the Client directs the Contractor to take instructions from); or
- (b) If additional Works are required due to unpredicted difficulties discovered upon commencement of the Works, such as:
 - (i) Site access and unsuitable ground conditions, or overhead obstructions;
 - (ii) Poor weather conditions;
 - (iii) If the Client's third-party contractor excavation work is not completed to a suitable standard, thereby requiring the Contractor to rectify or redo all or part of the Works. This Work will be charged as an extra, the Contractor reserves the right to halt Works in accordance with 7.2 until the prework has been remediated, all costs related to this will be the responsibility of the Client;
 - (iv) Additional Materials being necessary or any works to be completed by a third-party contractor engaged by the Client;
 - (v) Confronting hazardous waste (including asbestos) or contaminated ground, soil, materials, waste, or another surface;
 - (vi) Discovery of any fossils, artifacts or any other remains of geological or archaeological interest;
 - (vii) Needing to dewater any mains, ducts or other conduits or channels that may flood or allow water ingress because of the Works.
- (c) Delays more than thirty (30) minutes in loading or unloading occurring other than from the default of the Contractor once the Contractor has reported for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Client's representative, unless otherwise agreed, additional charges will apply:
 - (i) Hourly truck and driver rates for delays of (30) minutes or more; and
 - (ii) Disposal and transport cost of the Materials if the Materials cannot be delivered as agreed; and
- (d) As a result of increases beyond the Contractor's reasonable control in the cost of materials or labour (e.g., third-party suppliers' costs, etc.), or due to currency exchange rate; and
- (e) Any adjustment to the Price due to variation/s shall be allowed for at the time of the next payment claim made by the Contractor.
 - 5.2. The Client will have the opportunity to respond to such additional costs, failure to reply within 10 Business Days for the revised quote will be deemed to acceptance of additional charges, at the Contractor's actual cost plus the Contractor's margin (i.e. an amount to cover the Contractor's overheads, administrative costs, and profit) being fifteen (15%) percent, failure to comply will permit the Contractor to assume that the variation invoice is accepted without dispute. Payment will be due as per the date stated on the said invoice.
 - 5.3. Written acceptance by the Client of any variation submitted by the Contractor or EOT as per clause 7.2 must be obtained before any work pertaining to the variation is carried out. The Client must not refuse to accept any variation that is necessary for the Works to meet compliance with legal requirements.
 - 5.4. The Contractor must allow a reasonable reduction to the building period, if a variation reduces the Price for the Works required to achieve completion.

6. DELIVERY

- 6.1. Delivery ("**Delivery**") of the Materials is understood to occur when:
 - (a) The Client's designated cartage contractor collects the Materials at the Contractor's premises; or
 - (b) The Contractor's Delivery truck driver obtains a signed receipt of Delivery of the Materials by the Client or the Client's representative at the Client's Worksite address provided; or
 - (c) The Contractor's Delivery truck driver (after discussions with the Client) leaves the Materials as near to the Worksite address as is deemed safe (i.e kerbside) as in the driver's opinion it is believed the access is unsuitable and unsafe to take the weight of the load, if the Client rejects this option, additional costs for re-Delivery will apply.
- 6.2. Any Delivery costs associated with the supply of Materials or Works shall be either included or in addition to the Price and as such will be stated on the invoice issued to the Client by the Contractor. Additional travel charges will apply where the Works are to be provided outside of a 25km radius of the Contractor's base.
- 6.3. If the Client is unable to take Delivery of the Materials as arranged, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4. Delivery dates for the supply of the Materials and/or Works will only always be an estimate, as delays may occur beyond the Contractor's control i.e., Third Party Contractors, Force Majeure, etc (including Government imposed lockdowns effecting the Contractor's suppliers and employees, if a Worksite is closed and all tradespeople are

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required to, self-isolate). The Client must take Delivery by receipt or collection of the Materials whenever they are tendered for Delivery. The Contractor will **not be liable for any loss or damage incurred by the Client because of Delivery being late**, however, the Contractor will at every opportunity liaise with the Client to ensure Delivery does take place, as soon as reasonably possible.

7. WORKSITE ACCESS

7.1. The Client shall, prior to commencement of the Works:

- (a) Ensure the Worksite access is always free and clear to enable the Contractor to deliver the Materials and/or carry out the Works and that the Worksite is suitable to take the load of heavy equipment and/or trucks. The Contractor shall not be liable for any loss or damage to the Worksite, such as any destruction of pathways, tiling, driveways, or grassed areas), unless proven to be, due to the negligence of the Contractor;
- (b) Ensure the Contractor, while at the Worksite, is supplied with adequate access to available water, electricity, toilet and washing facilities as required;
- (c) Where agreed between the two parties, the Client will supply the Contractor a safe area for storage at the Worksite for the Materials and/or the Contractor' tools required to carry out the Works and shall take all reasonable efforts to protect all items from destruction, theft, or damage. If any of the stored items are destroyed, stolen or damaged, then the cost of replacement or repair shall be the Client's responsibility;
- (d) Confirm that the structure of the foundations, premises, or equipment in or upon which the Materials are to be installed or erected is sound and will sustain the installation and the Works incidental thereto. If for any reason (including the discovery of latent or unfavourable soil conditions such as liquefaction residue or risk) that the Contractor, or employees of the Contractor, reasonably form the opinion that the Client Worksite is not suitable for the installation of the Materials to proceed, then the Contractor shall be entitled to delay installation of the Materials as per clause 7.2;
- (e) Remove any furniture, personal effects, or other property likely to impede the Contractor on the Worksite, to minimise the risk of injury or any damage; and
- (f) Advise the Contractor the precise locations all hidden services (including but not limited to, electrical services, gas services, plumbing services such as, pumping services, irrigation pipes, sewer sludge mains, sewer connections and water mains or telecommunication cables, fibre optic cables, oil pumping mains and any other services that may be on the Worksite. All due care will always be exercised by the Contractor to avoid any damage to any hidden services; and
- (g) If asbestos or any other toxic or hazardous substances are discovered at the Worksite, it shall be the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Contractor against any costs incurred by the Contractor because of such discovery. Unless agreed otherwise, under no circumstances will the Contractor handle removal of asbestos or hazardous items; and
- (h) Unless otherwise agreed, the **Client is responsible to organise protection of the Worksite** during the performance of the Works by the Contractor, **by providing either temporary fencing and/or security guards** to secure the Worksite. Failure to adhere to this recommendation, that results in any destruction or damage on the Worksite by way of vandalism or theft, then such costs of repair or replacement shall be borne by the Client.

7.2. Extension Of Time "EOT" – the Contractor may at any time, at his/her discretion, seek an extension of time, to put back the commencement date and/or extend the Works period for completion, by giving the Client notice, (such written notice shall include the reasons and the requested length of said extension) which the grounds of extension are based upon because of:

- (a) Any variations as per clause 5;
- (b) Any delay in the supply or manufacture of Materials required for the Works;
- (c) Suspension of Works if the Construction Contract Act 2002 applies;
- (d) Inclement weather and the consequences of the weather to the Worksite access and safety and/or the ability to work; or (e) A force majeure event as per clause 24 (but only for the period that the force majeure event affects the Works); and
- (f) Discovery of any fossils, artifacts or any other remains of geological or archaeological interest, the Worksite will be subject to shut down until the Contractor is instructed to recommence the Works by the Client, additional costs incurred by the Contractor may apply because of any such delays, the Client will be responsible to meet such costs and will be invoiced as a variation in accordance with clause 5 above; and
- (g) Delay by any local or other authority in granting any necessary consent or approval; and
- (h) Any act, default, delay, or omission on the part of the Client in providing instructions, making payment, or doing anything necessary (including but not limited to, selecting items for the Works or the Worksite being ready for

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commencement of the Works and has suitably notified the Contractor) to allow the Works to proceed; (i) Anything outside the Contractor's reasonable control.

- 7.3. The Client agrees to indemnify the Contractor in respect of any liability claims, loss or damage, costs and fines as a result of the foundations or property being unable to accommodate the installation or damage to Works not precisely located as per clauses 7.1(d) and 7.1(f).
- 7.4. Nothing in this Contract shall have the effect of limiting or preventing the Contractor from claiming more than one extension of time for a delay specified in clause 7.2.

8. RISK TO MATERIALS

8.1. The Client must insure, the Materials on or before Delivery, as risk of damage to, or loss, of the Materials shall pass to the Client on Delivery.

8.2. Prior to ownership passing to the Client, if any of the Materials are damaged or destroyed following Delivery, the Contractor is entitled to receive all insurance proceeds payable for the Materials. Although the preparation of these terms and conditions is done so by the Contractor, the Contractor shall still be entitled, without prejudice to any other of its rights or remedies under these terms and conditions to use this Agreement with the Client, as sufficient evidence, if an insurance claim is made, without the need for any person dealing with the Contractor to make further investigations.

8.3. If the Contractor is instructed to leave Materials outside the Contractor's premises for the Client's collection or to deliver the Materials to an unmanned Worksite, then such Materials shall be left, at the Client's sole risk.

8.4. The Client Accepts and Agrees that:

- (a) Unless otherwise agreed by both parties in writing, all dimensions, plans, and specifications pertaining to the Works shall be in line with New Zealand Standards ("NZS") customary industry tolerances; and
- (b) The Contractor shall be entitled to rely on the accuracy of any plans, specifications or other information provided by the Client; and
- (c) If any such information provided by the Client or the Client's agent/representative is deemed inaccurate then the Contractor shall not be responsible for any losses, damages, or costs (howsoever arising) that the Client suffers out of the use of the inaccurate plans, specifications, or other information; and
- (d) Where the Works are commenced and then delayed by the Client for a period greater than 6 months, then payment for the Works completed to date must be made in full if not already done so. Furthermore, the Contractor shall reserve the right to requote for the remainder of the Works outstanding and the Contractor **shall not be held liable** for any damages, losses or costs incurred by the Client due to any such delays;
- (e) Materials may exhibit variations in shade, colour, markings, and indentations, surface texture, and finish, which may also fade or change colour over time. Batches of products can vary which is beyond the Contractor's control, but every effort will be made to match batch supplies and/or where new Materials are used with existing items to minimise such types of variations. The Contractor shall **not accept liability**, in any way whatsoever where such variations occur; and
- (f) Materials can mark or stain if exposed to certain substances or be damaged or disfigured by impact or scratching; and
- (g) All Materials supplied by the Contractor with product maintenance instructions is important to follow, as failure to comply with such maintenance instructions may void any applicable warranty.
- (h) If temporary repairs are performed by the Contractor:
 - (i) The Contractor offers **no guarantee** against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) Blockages found in existing drains due to the existence of plant root growth which is normally a sign there is damaged pipes that cannot be properly fixed by simply removing the root growth or blockage. If the Client chooses not to instruct the Contractor to carry out the Works of repair or replace damaged pipes or drains, then the Contractor gives **no guarantee** that the same or similar problems will not recur. The Client will be advised immediately of such an event together with an estimate for the full repair required; and
 - (iii) If the Contractor's needs to use specialised equipment to establish the exact section of damage, the Client agrees to confirm in writing that should such equipment becomes lodged or is damaged while in the Client pipes or drains, the Client agrees to indemnify the Contractor the costs of removal of the equipment including any necessary additional excavation and restoration work; and
 - (iv) The Client will be advised immediately of the fault, with an estimate for the full repair required; and
 - (v) The Contractor only accepts responsibility for the Materials that it replaces, **no liability** is accepted in respect of any previous goods or services supplied by any other third party that subsequently fail after the Contractor has conducted its temporary repair as requested and it is later discovered that the previous components or services were the actual source of the failure.

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- (vi) Any equipment partly or completely installed on the Worksite, is the Client's responsibility to insure, against theft or damage.

9. DEFECTS LIABILITY PERIOD

- 9.1. The Contractor shall rectify (at the Contractor's own expense) any defects or omission in the Works that have become apparent within 12 months of the date, that the Client is advised that the Works have been completed, provided that the Client has notified the Contractor in writing of any such defects or omissions no later than 5 Business Days after the expiry of the 12 months period.
- 9.2. For defective Materials or Works, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability (subject to clause 25.3 and the Consumer Guarantee's Act 1993, where applicable) is limited to either (at the Contractor's discretion) replacing the Materials, repairing the Materials, or rectifying the Works.

10. WARRANTIES

- 10.1. Where Materials are not manufactured by the Contractor the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, conditions, representation, or warranty other than that which is given by the manufacturers of the Materials.
- 10.2. The conditions applicable to any warranty given on the Materials supplied by the Contractor will be contained in the Warranty Documentation that will be supplied with the Materials at the point of sale and/or installation.

11. COMPLIANCE WITH LAWS

- 11.1. Both parties agreed to comply with the provisions of all statutes of New Zealand, regulations and bylaws of Government, local and other public authorities, that may be applicable to the Materials supplied or Works performed, including ss362I to 362K of the Building Act 2004, Plumbers, Gasfitters, and Drainlayers Act 2006, and Health and Safety laws, in accordance with the Health and Safety at Work Act 2015 ("the HSW Act") and the Resource Management Act 1991 (relating to the use, storage and/or disposal of any surplus Materials and/or waste from the Worksite).
- 11.2. Worksite inductions ("**Worksite Inductions**") are to be carried out, in accordance with New Zealand's Health and Safety Laws, prior to the commencement of the Works on the Worksite, regardless of whom is in possession of the Worksite.
- 11.3. Unless otherwise agreed, where the Client requires an employee or sub-contractor of the Contractor to undertake a Worksite Induction, during or outside normal working hours, then the Client accepts the liability for additional costs (charges based on the Contractor's standard hourly labour rate (and/or overtime, if applicable)) for the time involved for the Worksite Induction that the Contractor or the Contractor's representative must undertake to complete the Worksite Induction.
- 11.4. The Client will be responsible, at the Client's expense to:
- Obtaining any permits, consents, or approvals applicable to the Works, unless otherwise agreed between the two parties; and
 - Ensure that any Client supplied materials, are fit for purpose and their intended use. If in the Contractor's opinion, it believes that the materials supplied are non-conforming products which will not meet New Zealand regulations (Building Code), the Contractor shall be entitled, to reject such materials and/or halt the Works, without prejudice, until the appropriate conforming products are obtained. All costs associated with a change to the plans or specifications will be invoiced in accordance with clause 5.
- 11.5. If the Client is ever in breach of clause 11.1, then the Client accepts and agrees to indemnify the Contractor against all claims, liability, losses, or costs imposed or incurred by the Contractor, because of such a breach.

12. INSURANCE

- 12.1. The Contractor will have in place:
- Public Liability Insurance** with appropriate cover for loss or damage to any other property, or injury or death or illness which arises from carrying out the Contractor's Services of not less than \$1 million. It is the Client's responsibility to ensure that they are similarly insured; and
 - Contract Works Insurance** – where Works are to an existing structure (including, but not limited to, renovations, extensions, releveling etc.), the **Client is responsible** to arrange said insurance, prior to the Contractor undertaking the Works, however, for Contracts over the threshold of \$30,000 under the Building Amendment Act 2013, these will require the comprehensive Building Contract, which is outside the scope of these terms and conditions.

13. TITLE

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- 13.1. Title in the Materials and/or Works pass to the Client when payment for those Materials and/or Works (together with any additional interest or charges as set out in these terms of Trade) have been made in full by way of cleared funds and the Client's obligations have been fulfilled.
- 13.2. Until such time as title passes to the Client:
- (a) The Client holds the Materials on trust for the Contractor as bailee and must return any uninstalled Materials to the Contractor on request and irrevocably authorises the Contractor to enter any property where the Contractor believes the Materials are kept and recover possession of them, without the Contractor being liable for any loss or damage caused to the Client;
 - (b) The Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor, and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged, or destroyed;
 - (c) If the Client sells, disposes, parts with possession of the Materials or does anything to the Materials which changes its form, then the Client must hold the proceeds of any such act on trust for the Contractor, and if the Materials are sold, must pay, or deliver the proceeds to the Contractor on demand; and
 - (d) The Client shall not charge or grant an encumbrance over the Materials, nor grant nor otherwise give away any interest in the Materials, while they remain the Contractor's property.

14. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 14.1. The Client will provide such information and do such acts and execute such further documents as in the opinion of the Contractor may be necessary or desirable to enable the Contractor to perfect under the PPSA the security interest created by these terms and conditions.
- 14.2. The Contractor may do all things which it thinks desirable to remedy any default by the Client or otherwise protect all Materials or the security interest created by these terms and conditions.
- 14.3. The Client irrevocably appoints the Contractor to be the Client's attorney to do anything which the Contractor agrees to do under these terms and conditions and anything which the attorney thinks desirable to protect the Contractor's interests under these terms and conditions and the Client ratifies anything done by an attorney under this clause. The Client agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to these terms or the security under these terms and conditions.
- 14.4. The Client waives the Client's right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.
- 14.5. The Client agrees that none of the Client's rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall apply to these terms and conditions.
- 14.6. The Client also agrees, where the Client has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 14.7. The Client must not change the Client's name without first notifying the Contractor of the new name not less than 7 Business Days before the change takes effect.
- 14.8. The Client must not allow or permit the creation of a lien over any of the Materials.

15. SECURITY AND CHARGE

- 15.1. The Client acknowledges and accepts that by accepting these terms and conditions, it charges all its rights, title, and interest (whether joint or several) in any land, realty, or other assets capable of being charged (including, but not limited to, the payment of any money), 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.
- 15.2. The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 15.3. The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the Client's behalf.

16. INTELLECTUAL PROPERTY

- 16.1. All right, title, and interests in and to all Intellectual Property always will remain the exclusive property of the Contractor.
- 16.2. The Client agrees to indemnify the Contractor against any claims by third parties for any breach of the Intellectual Property caused by the Client. Furthermore, where the Client has supplied any Intellectual Property to the Contractor, the Client warrants that the supply of such Intellectual Property does not breach any patent, trademark, design, or copyright.

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16.3. The parties agree, unless the Client is to make purchase to the rights of any Intellectual Property created for them by the Contractor, that the Contractor retains all rights, to the use of said Intellectual Property for the Contractor's own benefit, such as, in the use of promoting their business or marketing thereof, or for entry use, in any competition.

17. DEFAULT

17.1. In any event, the Contractor reserves the right to charge the Client interest in respect of the late payment of any sums due under this Contract, which will be calculated and cumulated monthly, at the rate of five percent (5%) per year above the cash rate from time to time of the Reserve Bank of New Zealand, from the due date until receipt of payment, as well as before, any judgement.

17.2. The Contractor shall be entitled to suspend or cancel all or any part of this Contract and/or any other contract or contracts with the Client, in addition to its other remedies, upon the happening of any of the following events of default:

- (a) If any amounts payable by the Client to the Contractor are overdue; or
- (b) If the Client breaches, or fails to comply or repudiates, any obligation under this Contract or any other subsequent contract with the Contractor; or
- (c) The Client intimating that they will not pay any sum by the due date; or
- (d) Any Materials seized by any other creditor of the Client or any other creditor intimates that it intends to seize the Materials; or
- (e) Any Materials in the possession of the Client are materially damaged while any sum due from the Client to Contractor remains unpaid; or
- (f) The Client dies, becomes insolvent or subject to bankruptcy laws, calls a meeting of creditors, or if a company – enters into an arrangement with creditors or makes an assignment/compromise for the benefit of its creditors, or receivers, managers, liquidations (provisional or otherwise), administrators or any similar party is appointed in respect of the Client

(or any asset of the Client), has any winding up petition presented against, or ceases to carry on business; or

- (g) if the Client ceases or threatens to cease carrying on business; or
- (h) if the ownership or effective control of the Client is transferred, or the nature of the Client's business is materially altered. 17.3. Upon cancellation of this Contract all sums owing by the Client to the Contractor shall become immediately due and payable.

17.4. Where any event of default occurs, the Contractor may appoint a receiver in respect of all Materials (including their proceeds) supplied to the Client and any such receiver may take possession of the Materials and sell them and otherwise exercise all rights and powers conferred on a receiver by law.

17.5. Notwithstanding clause 17.1, it is further agreed that if the Client owes the Contractor any money, the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt, such as, any legal costs on a solicitor and own client basis or internal administration fee (which may include bank dishonour charges that the Contractor has incurred from their banking institute for dishonours or chargebacks) or any collection fees if a debt is passed to a recognised Debt Collection Recovery Agency.

18. CANCELLATION

18.1. By the Contractor:

- (a) May occur at any time before the Works are carried out by giving 7 Business Days written notice; and
- (b) The Contractor will repay to the Client any money paid by the Client for the Materials or Works, less any amounts owing to the Contractor for any Materials purchased on the Client's behalf where credits or refunds cannot be obtained from the Contractor's third- party suppliers; and
- (c) The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation; and
- (d) Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Contractor may suspend or terminate the supply of the Works to the Client under section 24A of the Construction Contracts Act 2002 including any subsequent amendments. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor exercised its rights under this clause.

18.2. By the Client:

- (a) Prior to Delivery of the Materials and/or Works, by giving no less than 7 Business Days written notice, the Client remains liable for any costs incurred by the Contractor (including, but not limited to, loss of profit) up to the time of cancellation; or

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- (b) Where the Client cancels an order that has commenced:
 - (i) The initial notification may be by telephone but must be confirmed in writing or email within 7 Business Days; and
 - (ii) The Client shall be invoiced for all work completed up until the date of cancellation. Any deposit paid prior to the commencement of the Works will be forfeited in lieu of monies due, however, the Client remains liable for any monies due over and above any deposit paid; or
 - (iii) At the Contractor's discretion, where failure of clause 18.2(b)(i) occurs, the Client may be required to pay the full quoted Price.
- (c) Cancellation is **not accepted** by the Contractor if the new Materials have been used, if the Client later changes their mind, unless the cancellation is subject to the Consumer Guarantees Act 1993.

19. PRIVACY POLICY

- 19.1. The Client authorises the Contractor to collect, retain and use Personal Information about the Client for the following purposes: (a) Assessing the Client's creditworthiness; (b) Administering the Client orders;
- (c) Receiving information from one or more credit reference agencies, concerning the credit history of the Client;
 - (d) Disclosing credit-related information to, and using the credit Works of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Client's credit worthiness.
- 19.2. For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the term of the Contractor and Client's trading relationship.
- 19.3. The Client, if an individual, has a right of access to Personal Information about the Client held by the Contractor and may request correction of the information.
- 19.4. For the purposes of this clause 19, Personal Information has the meaning given to it in the Privacy Act 2020.

20. NOTICES

- 20.1. If either party gives or is required to give notice to the other party under this Contract, it must be;
- (a) In writing;
 - (b) Directed to the recipient's address for service of notices specified in the quotation or, proposal (Contract details) or as advised from time to time; and
 - (c) Hand-delivered or sent by pre-paid post or by email to that address.
- 20.2. **Notice is taken as received when:**
- (a) A notice given in accordance with clause 20.1 is taken to be received; or
 - (b) If hand-delivered on delivery; or
 - (c) If sent by prepaid post, 5 Business Days after the date of posting for local or regional mail and 10 Business Days after the date of posting for international mail; or
 - (d) If sent by registered mail, immediately upon signed receipt thereof; or
 - (e) If sent by email, at the time denoted in an automated receipt notification received by the sender (in the absence of manifest error or tampering) or, if that function is not enabled, upon acknowledgement of receipt by the other party by return email or otherwise).

21. DISPUTE RESOLUTION

- 21.1. If a dispute arises between the parties to this Contract, then either party shall send to the other party a notice of dispute in writing detailing the grounds of said dispute. Within 14 days after service of a notice of dispute, the parties shall use their reasonable efforts, to attempt to resolve the dispute (each party shall bear their own costs associated with any mediation method). If the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by registered mail to the other party stating that such dispute is now to be referred to either arbitration in accordance with the Arbitration Act 1996 or its replacements or adjudication in accordance with the Construction Contract Act 2002.
- 21.2. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.
- 21.3. Furthermore, the Client agrees not to contract any third party to replace the Contractor as their provider of the Works to be supplied under this Contract until the dispute resolution process in clause 21.1 has been completed, and then only if arbitration has found against the Contractor in its determination, and the Contractor is unable or unwilling to resolve, rectify or correct the issues that have led the arbitrator to find against the Contractor.

22. CONSUMER GUARANTEE ACT 1993

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22.1. If the Client is acquiring Works 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 Works by the Contractor to the Client.

23. ASSIGNMENT

23.1. The Client shall not assign, sub-license or otherwise transfer this Contract or any part of it to any other person without the prior written consent of the Contractor.

23.2. The Contractor may assign (including but not limited to, subcontracting out any part of the Works), encumber, declare a trust over or otherwise deal with its rights under this Contract without the Client's consent and the Client must do, and must ensure, that the Client's personnel do anything necessary (including execute any document), that the Contractor may reasonably require to give full effect to this clause, nonetheless, in doing so the Contractor shall not be relieved from any liability or obligation under this Contract.

23.3. The Client accepts that any instruction to any sub-contractors of the Contractor, must be initiated only by the Contractor. The Client does not have any right to redirect the performance of the Works or make any changes with a sub-contractor, without firstly obtaining written authority from the Contractor.

24. FORCE MAJEURE

24.1. Neither party shall be liable if a Force Majeure event occurs:

- (a) The obligations of a party under this Contract will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under this Contract by Force Majeure; and
- (b) A party affected by Force Majeure must notify the other party as soon as practicable of the Force Majeure and the extent to which that party is unable to comply with its obligations; and
- (c) If a failure or delay in performance exceeds 60 Business Days, either party may immediately terminate this Contract by written notice to the other party.

24.2. Nothing in clause 24.1 shall excuse payment of any amount owing due or which becomes due under the terms of this Contract.

25. MISCELLANEOUS

25.1. If any term or provision of this Contract is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms and conditions.

25.2. The legality, construction and performance of this Contract shall be governed by the laws of New Zealand. The Client agrees that any dispute arising from the Contract between the two parties that cannot reasonably be resolved by mediation shall then be litigated only, by the jurisdiction of the Timaru Courts of New Zealand.

25.3. The Contractor shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to, legal fees and commissions), damages suffered or incurred by the Contractor or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Contract, or that arise from any claim relating to the Works by any person that the Client authorises to use the Works, (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Materials and/or Works supplied under this Contract).

25.4. The Contractor (at the Contractor's discretion) may from time to time amend their general terms and conditions and for disclosure purposes shall do so by, notifying the Client in writing and/or by posting the updated terms and conditions on the Contractor's website. The amended terms and conditions will take effect for all future contracts from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Materials and/or Works to the Client.

26. DEFINITIONS AND INTERPRETATION

26.1. In this Contract, unless the context otherwise requires capitalised terms have the meaning set out below:

- (a) "**Business Days**" means a day on which banks are open for business in New Zealand other than a Saturday, Sunday, or public holiday.
- (b) "**Client**" means the person/s, entities (including but not limited to, partnerships and/or a trust and where applicable shall include the Client's executors, administrators, successors and permitted assigns) or any person acting on behalf of and

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with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice, or other documentation.

(c) **“Confidential Information”** means any information:

- (i) Relating to this Contract;
- (ii) Relating to a quotation, order or proposal or its contents;
- (iii) Relating to a Client of the Contractor
- (iv) Disclosed by either party to the other party on the express basis that such information is confidential; or (v) Which might reasonably be expected by either party to be confidential in nature.

Provided that, where information relates exclusively to one party, nothing in this Contract will require that party to maintain confidentiality in respect of that information.

(d) **“Contract”** means this Contract, inclusive of its terms and conditions contained herein, its schedules and annexures or any quotation, proposal, invoice, or document that forms part thereof and/or is deemed to be supplementary to this Contract.

(e) **“Contractor”** means **Plumb Stuff NZ Limited**, its successors, and assigns.

(f) **“Force Majeure”** means an event outside the reasonable control of either party, including an act of God, earthquake, adverse weather conditions, flood, storm, fire, explosion, war, rebellion, terrorism, strike, lock-out, industrial action national or global epidemics or pandemic and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government quarantine restrictions for Materials or individuals.

(g) **“GST”** means Goods and Services Tax, as defined within the Goods and Services Tax Act 1985.

(h) **“Intellectual Property”** means and includes (whether invisible, electronic or any other form) all brands, and symbols, names and images used in commerce, goodwill, logos, formulae, techniques, know-how, specifications, designs, drawings, copyright, manufacturing processes, patents, and trademarks (if any) whether registered or not, software (and source and object code), business strategies and contracts, confidential business information including market and marketing strategies.

(i) **“Materials”** means any Materials of any kind that the Contractor provides to the Client as specified in any Contract, quotation, proposal, order, or any other documentation.

(j) **“Personal Information”** means information about an identifiable individual by ways of their name, address, D.O.B., occupation, driver’s license details, electronic contact type details, such as, email, IP Address, Facebook, or Twitter, or next of kin and any other contact information (if applicable) and were deemed relevant shall include any previous credit applications or credit history details. By the nature of such information, it shall always be considered, Confidential Information.

(k) **“PPSA”** means Personal Property Securities Act 1999.

(l) **“Price”** means the Price due under this Contract for the supply of Materials and/or Works as agreed between the Contractor and the Client and (if applicable) shall include any GST payable.

(m) **“Works”** means all Works (including any documentation, advice, consultancy, or recommendations and where these terms and conditions give allowance to, the terms ‘Materials’ or ‘Works’ may be identified and substitutable for the other) supplied by the Contractor to the Client, and are as described on the invoices, quotation, authorisation form or any other forms as provided by the Contractor to the Client.

(n) **“Worksite”** means the land (or that part of the land) that the Contractor reasonably needs to occupy to carry out and practically complete the Works required under this Contract.

26.2. In this Contract, unless the context requires otherwise:

- (a) **Headings:** Headings shall be ignored in construing this document;
- (b) **Joint obligations:** An obligation incurred in favours of two or more parties shall be enforceable by them jointly or severally;
- (c) **Parts of Contract:** References to this Contract including its clauses, schedules, annexures;
- (d) **Plurals:** This singular shall include the plural and vice versa and word importing one gender shall include every gender and a reference to a person shall include any other legal entity of whatsoever kind and vice versa;
- (e) **Price:** A reference to dollars or \$ is to an amount in New Zealand currency;

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- (f) **Statutory Requirements:** A reference to a statute, ordinance code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).

26.3. **Neutral Interpretation** - nothing in this Contract is to be interpreted against a party solely on the ground that that party put forward this Contract or a relevant part of it.

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