

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

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with ADCO and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Clients credit limit and/or the account exceeds the payment terms, ADCO reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to ADCO as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the Works on the Client’s behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies ADCO in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise ADCO in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to ADCO for all additional costs incurred by ADCO (including ADCO’s profit margin) in providing any Materials, Works or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that ADCO 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 ADCO 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 ADCO in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of ADCO; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

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

6. Price and Payment

- 6.1 At ADCO’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by ADCO to the Client in respect of Works performed or Materials supplied; or

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- (b) ADCO's quoted Price (subject to clause 6.2) which shall be binding upon ADCO provided that the Client shall accept ADCO's quotation in writing within thirty (30) days.
- 6.2 ADCO reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) in the event of increases to ADCO in the cost of labour or materials which are beyond ADCO's control.
- 6.3 Variations will be charged for on the basis of ADCO's quotation, and will be detailed in writing, and shown as variations on ADCO's invoice. The Client shall be required to respond to any variation submitted by ADCO within ten (10) working days. Failure to do so will entitle ADCO 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 ADCO's sole discretion a deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by ADCO, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with ADCO's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by ADCO.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 6.7 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Client and ADCO.
- 6.8 ADCO may in its discretion allocate any payment received from the Client towards any invoice that ADCO determines and may do so at the time of receipt or at any time afterwards. On any default by the Client ADCO may re-allocate any payments previously received and allocated. In the absence of any payment allocation by ADCO, payment will be deemed to be allocated in such manner as preserves the maximum value of ADCO's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by ADCO nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by ADCO is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to ADCO an amount equal to any GST ADCO must pay for any supply by ADCO under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Provision of the Works**
- 7.1 Subject to clause 7.2 it is ADCO's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that ADCO claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond ADCO's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify ADCO that the site is ready; or
 - (d) current or forecasted adverse weather conditions; or
 - (e) unavailability of Materials.
- 7.3 In the event that ADCO is required to provide the Works urgently, requiring ADCO's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays), then ADCO reserves the right to charge the Client additional labour costs (penalty rates will apply) as per clause 6.5(b), unless otherwise agreed between ADCO and the Client.
- 7.4 At ADCO's sole discretion, the cost of delivery is additional to the Price.
- 7.5 ADCO may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Where the Client requests a postponement to the agreed start date, ADCO requires a minimum of forty-eight (48) hours' notice of such postponement. Failure by the Client to provide such notice will allow ADCO to charge a cancellation fee at ADCO's sole discretion.
- 7.7 Upon completion of the Works and on receipt of final payment, ADCO will provide the Client with a Producer Statement (PS3 – for construction by a contractor/supplier) which will apply to the Works provided by ADCO and can be used by the Client to gain relevant compliance.
- 7.8 The Client accepts and acknowledges that where the distance between the site and delivery area is greater than twenty-five metres (25m), then additional costs may be applied at ADCO's sole discretion.
- 7.9 Where the Works are commenced and then delayed by the Client for a significant period, then payment for the Works completed must be made in full if not already done so and ADCO shall reserve the right to requote for the remainder of the Works outstanding.
- 7.10 If while ADCO are on site and additional or associated damage is found, ADCO shall duly notify the Client of such damage, and where appropriate, provide the Client with an indication of repair cost which shall be at the Client's expense.
- 8. Risk**
- 8.1 If ADCO retains ownership of the Materials under clause 13 then:

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- (a) where ADCO is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
- (i) the Client or the Client's nominated carrier takes possession of the Materials at ADCO's address; or
 - (ii) the Materials are delivered by ADCO or ADCO's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where ADCO is to both supply and install Materials then ADCO shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests ADCO to leave Materials outside ADCO's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 Where ADCO has effected delivery, all risk passes to the Client as per clause 8.1 and the Client claims the Materials have been stolen it shall be the Client's responsibility to notify the police and forward evidence to ADCO, this shall not excuse the Client from fulfilling their financial obligations under this Contract.
- 8.4 Where ADCO gives advice or recommendations to the Client as to a particular course of action and such advice or recommendations are not acted upon then ADCO shall:
- (a) reserve the right to cancel the Contract; or
 - (b) require the Client or their agent to authorise the Works in writing in which case ADCO shall not be liable in any way whatsoever for any damages or losses that occur as a result of such advice or recommendations not being followed.
- 8.5 Further to clause 6.3, ADCO shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, ADCO accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, ADCO reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases ADCO will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Works on hold, as per clause 7.2 until such time as ADCO and the Client agree to such changes. Furthermore, ADCO shall not be liable for any loss, costs or delays that may arise where the Client opts to either wait for the Materials to become available or for the time taken by the Client to make another selection.
- 8.7 ADCO shall endeavour to match old for new however the Client accepts and acknowledges that colours may not match due to differences in colour production technologies or batches/production runs, fading and/or weathering of the sample provided to colour match from. Therefore, ADCO shall not be held responsible or liable for any differences that may result.
- 8.8 Where ADCO is required to install the Materials the Client warrants that the structure of the premises in or upon which these Materials are to be installed is sound and will sustain the installation and work incidental thereto. If for any reason (including the discovery of asbestos, rotting timber or other defects, or dangerous access to roof) that ADCO, its employees or sub-contractors reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then ADCO shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until ADCO is satisfied that it is safe for the installation to proceed. ADCO may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price. ADCO shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises be unable to accommodate the installation.
- 8.9 Subject to clause 8.8, where it is deemed to be necessary, a full roofing survey shall be carried out at the Client's expense before commencement or continuance of the Works.
- 8.10 Where the Client has supplied goods for ADCO to complete the Works:
- (a) the ownership of those goods shall remain with the Client; and
 - (b) the Client acknowledges and accepts responsibility for the suitability of purpose (including meeting industry standards), quality and any faults inherent in the goods; and
 - (c) ADCO shall not be responsible for any defects in the goods, any loss or damage to the Works (or any part thereof), howsoever arising from the use of goods supplied by the Client.
- 8.11 The Client acknowledges and accepts that:
- (a) where ADCO's quotation is for repairs, the quotation shall be based only on the replacement of damaged materials and shall not include the replacement of materials with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of materials that have slight imperfections but ADCO does not deem to be defective or affect the integrity of the structure then this shall be a variation to the original quotation and clause 6.2 will apply; and
 - (b) any advice or recommendations by ADCO are provided on the basis of ADCO's industry knowledge of New Zealand conditions.
 - (c) ADCO's recommendations in relation to the Materials' suitability should be adhered to, including, but not limited to, pitch, depth, size, insulation requirements and environmental location. If an agreement is not reached, the Client will accept all responsibility and liability for any problems that may arise. Furthermore, the Client agrees to indemnify ADCO against any loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks or that ADCO may incur through the Client's failure to comply with this clause; and
 - (d) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any finishing trims used due to the difference in metal alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Materials; and
 - (e) no persons other than those authorised or employed by ADCO are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. ADCO shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause; and

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- (f) ADCO is only responsible for parts that are replaced by ADCO 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 Client agrees to indemnify ADCO against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and
 - (g) ADCO shall not be liable whatsoever for any loss or damage to the Works that is caused by any other tradesmen or third party. However, should the Client request ADCO to remedy any damage, then all costs shall be charged as a variation.
- 8.12 The Client acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching; and
 - (e) show variations of texture, shade, colour, surface, finish, and contain occlusions, and indentations. Whilst ADCO will make every effort to match sales samples to the finished Materials ADCO accepts no liability whatsoever:
 - (i) where such samples differ to the finished Materials supplied; or
 - (ii) for any loss, damages or costs howsoever arising resulting from any texture, shade, colour, surface, finish, and natural fissures, occlusions, and indentations between different batches of product.
- 8.13 In the event that the Client's property experiences any movement which in turns causes cracks to or displacement of the Materials supplied or installed, the Client accepts and acknowledges that if the Client requests ADCO to rectify such damage that ADCO reserves the right shall charge the Client for additional Works in accordance with clause 6.2.

9. Client's Responsibilities

- 9.1 It is the intention of ADCO and agreed by the Client that it is the responsibility of the Client to provide:
- (a) free access to power, water, toilet or other facilities as may be required by ADCO;
 - (b) any traffic management plans as may be applicable;
 - (c) lifting and/or heavy equipment as may be required to enable ADCO to complete the Works;
 - (d) and have erected scaffolding to enable the Works to be undertaken (where in ADCO's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed; and
 - (e) should any of the above not be provided as agreed or up to the required standard, then ADCO shall reserve the right to charge the Client where ADCO subsequently is required to arrange such traffic management plans, equipment or scaffolding.
- 9.2 It shall be the Client's responsibility to ensure:
- (a) that animals and children are removed from the area surrounding the Works in order to ensure safety of all parties that may be present at the site; and
 - (b) ensuring that a maximum clearance of three and a half metres (3.5m) is allowed in respect of overhead obstacles, trees or power lines; and
 - (c) that where power lines enter into the premises at roof level, then these are rendered safe for the duration of the Works.
- 9.3 Where requested, the Client shall be responsible for the provision of and related costs for a waste disposal bin to be made available for ADCO's use.
- 9.4 The Client shall ensure that ADCO has clear and free access to the site at all times to enable them to undertake the Works. ADCO 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 ADCO.
- 9.5 The Client acknowledges and agrees that in the event ADCO require access in order to undertake the Works to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Works. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by ADCO in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

10. Hidden Services

- 10.1 Prior to ADCO commencing any work the Client must advise ADCO of the precise location of all services on the site and clearly mark the same. The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 10.2 Whilst ADCO will take all care to avoid damage to any services the Client agrees to indemnify ADCO 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 Both the Client and ADCO agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, (including but not limited to, the Good Practice Guidelines for scaffolding / edge fall protection / fall through protection) as outlined in the Scaffolding In New Zealand published by WorkSafe and including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.
- 11.2 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") ADCO agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
- 11.3 The Client shall (at the expense of the Client):

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- (a) obtain all licenses, approvals, applications and permits that may be required for the Works, and that are not included in the project documents provided by ADCO;
 - (b) advise ADCO of the precise location of all known risks present on the site, and where applicable, on:
 - (i) any WorkSafe management system;
 - (ii) site safety expectations;
 - (iii) emergency provisions;
 - (iv) risks and their control measures; and
 - (v) incident reporting expectations.
- 11.4 *Site Inductions*
- (a) in the event the Client requires an employee or sub-contractor of ADCO to undertake a site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction is needed to be undertaken prior to the commencement date then the Client shall be liable to pay ADCO's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where ADCO is in control of the site, the Client and/or the Client's third party contractors must initially carry out ADCO's Health & Safety induction course before access to the site will be granted. Inspection of the site during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by ADCO.
- 12. Insurance**
- 12.1 ADCO shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.
- 13. Title**
- 13.1 ADCO and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid ADCO all amounts owing to ADCO; and
 - (b) the Client has met all of its other obligations to ADCO.
- 13.2 Receipt by ADCO 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to ADCO on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for ADCO and must pay to ADCO the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by ADCO shall be sufficient evidence of ADCO's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with ADCO to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for ADCO and must pay or deliver the proceeds to ADCO on demand;
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of ADCO and must sell, dispose of or return the resulting product to ADCO as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises ADCO to enter any premises where ADCO believes the Materials are kept and recover possession of the Materials;
 - (g) ADCO may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) 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 property of ADCO;
 - (i) ADCO may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 14. Personal Property Securities Act 1999 ("PPSA")**
- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to ADCO for Works – that have previously been supplied and that will be supplied in the future by ADCO to the Client.
- 14.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ADCO may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, ADCO for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of ADCO; and
 - (d) immediately advise ADCO of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.3 ADCO and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by ADCO, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by ADCO under clauses 14.1 to 14.5.

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14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

15.1 In consideration of ADCO agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

15.2 The Client indemnifies ADCO from and against all ADCO's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ADCO's rights under this clause.

15.3 The Client irrevocably appoints ADCO and each director of ADCO as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects In Materials

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

16.2 Materials will not be accepted for return other than in accordance with 16.1 above.

17. Returns

17.1 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

18. Warranties

18.1 Subject to the conditions of warranty set out in clause 18.2 ADCO warrants that if any defect in any workmanship of ADCO becomes apparent and is reported to ADCO within twelve (12) months of the date of delivery (time being of the essence) then ADCO will either (at ADCO's sole discretion) replace or remedy the workmanship.

18.2 The conditions applicable to the warranty given by clause 18.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) failure on the part of the Client to properly maintain any Materials; or

(ii) failure on the part of the Client to follow any instructions or guidelines provided by ADCO; or

(iii) any use of any Materials otherwise than for any application specified on a quote or order form; or

(iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and ADCO shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without ADCO's consent.

(c) in respect of all claims ADCO shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

18.3 For Materials not manufactured by ADCO, the warranty shall be the current warranty provided by the manufacturer of the Materials. ADCO 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 Materials.

18.4 In the case of second hand Materials, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by ADCO as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. ADCO shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

19. Consumer Guarantees Act 1993

19.1 If the Client is acquiring Materials 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 Materials by ADCO to the Client.

20. Intellectual Property

20.1 Where ADCO has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in ADCO, and shall only be used by the Client at ADCO's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of ADCO.

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

20.3 The Client agrees that ADCO may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which ADCO has created for the Client.

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 ADCO's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 21.2 If the Client owes ADCO any money the Client shall indemnify ADCO from and against all costs and disbursements incurred by ADCO in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ADCO's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies ADCO may have under this Contract, if a Client has made payment to ADCO, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by ADCO under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to ADCO's other remedies at law ADCO shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ADCO shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to ADCO becomes overdue, or in ADCO's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by ADCO;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

- 22.1 Without prejudice to any other rights or remedies ADCO may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then ADCO may suspend the Works immediately. ADCO will not be liable to the Client for any loss or damage the Client suffers because ADCO has exercised its rights under this clause.
- 22.2 ADCO may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice ADCO shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to ADCO for Works already performed. ADCO shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by ADCO as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by ADCO is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. ADCO acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). ADCO acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by ADCO that may result in serious harm to the Client, ADCO will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to ADCO in respect of Cookies where transactions for purchases/orders transpire directly from ADCO's website. ADCO agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to ADCO when ADCO sends an email to the Client, so ADCO may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via ADCO's website.
- 23.3 The Client authorises ADCO or ADCO's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by ADCO from the Client directly or obtained by ADCO from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request ADCO for a copy of the Personal Information about the Client retained by ADCO and the right to request ADCO to correct any incorrect Personal Information about the Client held by ADCO.

24. Suspension of Works

- 24.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) ADCO has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:

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- (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to ADCO by a particular date; and
 - (iv) ADCO has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if ADCO suspends work, it:
- (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if ADCO exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to ADCO under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of ADCO suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes ADCO from continuing the Works or performing or complying with ADCO's obligations under this Contract, then without prejudice to ADCO's other rights and remedies, ADCO may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by ADCO as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 24.2 If pursuant to any right conferred by this Contract, ADCO suspends the Works and the default that led to that suspension continues unremedied subject to clause 22.1 for at least ten (10) working days, ADCO shall be entitled to terminate the Contract, in accordance with clause 22.

25. Service of Notices

- 25.1 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.
- 25.2 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.

26. Trusts

- 26.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not ADCO may have notice of the Trust, the Client covenants with ADCO as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of ADCO (ADCO will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

27. General

- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Tauranga.
- 27.4 ADCO shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ADCO of these terms and conditions (alternatively ADCO's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 ADCO may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.6 The Client cannot licence or assign without the written approval of ADCO.

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- 27.7 ADCO may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of ADCO's sub-contractors without the authority of ADCO.
- 27.8 The Client agrees that ADCO may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for ADCO to provide Works to the Client.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.