

Electrical & Automation Solutions Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “**EAS**” means Electrical & Automation Solutions Limited, its successors and assigns or any person acting on behalf of and with the authority of Electrical & Automation Solutions Limited.
- 1.3 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting EAS 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 or Materials supplied by EAS 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 “**Worksite**” means the address nominated by the Client to which the Materials are to be supplied by EAS.
- 1.6 “**Intended Use**” means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.7 “**Non-Conforming Building Product**” means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 “**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.
- 1.9 “**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 using EAS’ 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 making enquiries via the website.**
- 1.10 “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between EAS 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 (including the issuance of a purchase order number) 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 EAS and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, EAS reserves the right to refuse delivery.
- 2.6 In the event that EAS is required to provide the Works urgently, that may require EAS’ staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then EAS reserves the right to charge the Client additional labour costs (penalty rates will apply) and/or mileage, unless otherwise agreed between EAS and the Client.
- 2.7 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. Errors and Omissions

- 3.1 The Client acknowledges and accepts that EAS 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 EAS 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 EAS in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of EAS; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give EAS 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 EAS as a result of the Client’s failure to comply with this clause.

5. Authorised Representative and Purchase Orders

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to EAS 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 EAS in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise EAS in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to EAS for all additional costs incurred by EAS (including EAS' 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 5.2 (if any)).
- 5.4 The Client acknowledges and agrees where the Client elects to control their purchases by a Purchase Order, then all purchases made by Client and/or any other third party acting on behalf of the Client to which the Materials are charged to the Client's credit account, shall remain at all times payable by the Client.

6. Price and Payment

- 6.1 At EAS' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by EAS to the Client in respect of Works performed or Materials supplied; or
 - (b) EAS' quoted Price (subject to clause 6.2) which shall be binding upon EAS provided that the Client shall accept EAS' quotation in writing within thirty (30) days.
- 6.2 EAS 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) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Worksite and/or crawl spaces, existing state of electrical components or switchboard, non-compliant wiring, availability of machinery, safety considerations including the discovery of asbestos or synthetic mineral fibres, prerequisite work by any third party not being completed or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to EAS in the cost of labour or materials (including the increase in overseas transactions as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond EAS' control.
- 6.3 Variations will be charged for on the basis of EAS' quotation, and will be detailed in writing, and shown as variations on EAS' invoice. The Client shall be required to respond to any variation submitted by EAS within ten (10) working days. Failure to do so will entitle EAS 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 EAS' sole discretion a non-refundable 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 EAS, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with EAS' 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 EAS.
- 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 Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015.
- 6.7 EAS may in its discretion allocate any payment received from the Client towards any invoice that EAS determines and may do so at the time of receipt or at any time afterwards. On any default by the Client EAS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by EAS, payment will be deemed to be allocated in such manner as preserves the maximum value of EAS' Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 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 EAS nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by EAS is a claim made under the Construction Contracts Act 2002.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to EAS an amount equal to any GST EAS must pay for any supply by EAS under this or any other contract 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 EAS' 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 EAS claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond EAS' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify EAS that the Worksite is ready.
- 7.3 At EAS' sole discretion, the cost of providing the Works is included in the Price.

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- 7.4 Delivery of the Works to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 7.5 EAS 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 Any time specified by EAS for delivery of the Works is an estimate only and EAS will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that EAS is unable to supply the Works as agreed solely due to any action or inaction of the Client, then EAS shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

8. Risk

- 8.1 If EAS retains ownership of the Materials under clause 14 then:
- (a) where EAS 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 EAS' address; or
- (ii) the Materials are delivered by EAS or EAS' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where EAS is to both supply and install Materials then EAS 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 EAS to leave Materials outside EAS' 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 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 8.4 The Client warrants that any structures or equipment to which the Materials are to be affixed are able to withstand the installation of the Materials and that any equipment and/or electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to crawl spaces), EAS reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then EAS shall be entitled to delay installation of the Materials (**in accordance with the provisions of clause 7.2 above**) until EAS is satisfied that it is safe for the installation to proceed.
- 8.5 The Client acknowledges that EAS is only responsible for parts that are replaced by EAS, and in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify EAS against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 8.6 The Client acknowledges and agree that where EAS has performed temporary repairs on that:
- (a) EAS offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) EAS will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.
- 8.7 The Client acknowledges and accepts that EAS shall be entitled to charge for additional cost in labour where EAS' employees and/or subcontractors are required to attend a compulsory induction course on the worksite prior to commencement of the Work. The cost for additional labour will be calculated from the time that the course commences. Induction training attendances will be detailed on invoices issued in accordance with clause 6.2.

9. Product Specifications

- 9.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in EAS' or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by EAS;
- (b) while EAS may have provided information or figures to the Client regarding the performance of the Materials, the Client acknowledges that EAS has given these in good faith, and are estimates based on industry prescribed estimates under optimal operating conditions.

10. Client's Responsibility

- 10.1 It is agreed that the Client will remove from the work area any furniture, personal effects or other property likely to impede EAS in order to minimise the risk of injury or any damage.

11. Access

- 11.1 The Client shall ensure that EAS has clear, uninterrupted and free access to the Worksite at all times to enable them to undertake the Works. EAS shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of EAS.

12. Underground Locations

- 12.1 Prior to EAS commencing any work the Client must advise EAS of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 12.2 Whilst EAS will take all care to avoid damage to any underground services the Client agrees to indemnify EAS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Compliance with Laws

- 13.1 The Client and EAS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the Building Amendment Act 2013, in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client has supplied products for EAS to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in EAS' opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then EAS shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.5 The Client agrees that the Worksite will comply with any WorkSafe and health and safety laws relating to the Worksite and any other relevant safety standards or legislation.
- 13.6 Unless otherwise agreed to, EAS has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, EAS shall not be the person who controls the place of work in terms of the HSW Act.
- 13.7 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by EAS, then EAS shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.
- 13.8 Any live work or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". EAS' live work procedures are designed to eliminate risk of injury to EAS' employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.

14. Title

- 14.1 EAS and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid EAS all amounts owing to EAS; and
 - (b) the Client has met all of its other obligations to EAS.
- 14.2 Receipt by EAS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to EAS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for EAS and must pay to EAS 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 EAS shall be sufficient evidence of EAS' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with EAS 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 EAS and must pay or deliver the proceeds to EAS 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 EAS and must sell, dispose of or return the resulting product to EAS as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises EAS to enter any premises where EAS believes the Materials are kept and recover possession of the Materials.
 - (g) EAS 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 EAS.
 - (i) EAS may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

15. Personal Property Securities Act 1999 ("PPSA")

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to EAS for Works – that have previously been supplied and that will be supplied in the future by EAS to the Client.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EAS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, EAS 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 EAS; and

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- (d) immediately advise EAS 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.
- 15.3 EAS and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by EAS, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by EAS under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of EAS 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).
- 16.2 The Client indemnifies EAS from and against all EAS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EAS' rights under this clause.
- 16.3 The Client irrevocably appoints EAS and each director of EAS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Defects In Materials**
- 17.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify EAS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford EAS 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 EAS has agreed in writing that the Client is entitled to reject, EAS' liability is limited to either (at EAS' discretion) replacing the Materials or repairing the Materials.
- 17.2 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) EAS has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) EAS will not be liable for Materials which have not been stored or used in a proper manner; and
 - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 Non-defective Materials, 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 EAS warrants that if any defect in any workmanship of EAS becomes apparent and is reported to EAS within twelve (12) months of the date of delivery (time being of the essence) then EAS will either (at EAS' 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 EAS; 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 EAS shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without EAS' consent.
 - (c) in respect of all claims EAS 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 EAS, the warranty shall be the current warranty provided by the manufacturer of the Materials. EAS 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.
- 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 ("CGA") do not apply to the supply of Materials by EAS to the Client.
- 20. Intellectual Property**
- 20.1 Where EAS 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 EAS, and shall only be used by the Client at EAS' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of EAS.
- 20.2 The Client warrants that all designs, specifications or instructions given to EAS will not cause EAS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify EAS against any action taken by a third party against EAS in respect of any such infringement.

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20.3 The Client agrees that EAS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which EAS 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 EAS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

21.2 If the Client owes EAS any money the Client shall indemnify EAS from and against all costs and disbursements incurred by EAS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EAS' collection agency costs, and bank dishonour fees).

21.3 Further to any other rights or remedies EAS may have under this Contract, if a Client has made payment to EAS, 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 EAS 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 EAS' other remedies at law EAS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EAS shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to EAS becomes overdue, or in EAS' 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 EAS;
- (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 remedies EAS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EAS may suspend or terminate the supply of Works to the Client. EAS will not be liable to the Client for any loss or damage the Client suffers because EAS has exercised its rights under this clause.

22.2 EAS 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 EAS shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to EAS for Works already performed. EAS 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 EAS 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 EAS is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. EAS 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" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). EAS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by EAS that may result in serious harm to the Client, EAS 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 EAS in respect of Cookies where the Client utilises EAS' website to make enquiries. EAS 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 EAS when EAS sends an email to the Client, so EAS may collect and review that information ("collectively Personal Information")

If the Client consents to EAS' use of Cookies on EAS' website and later wishes to withdraw that consent, the Client may manage and control EAS' privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

23.3 The Client authorises EAS or EAS' 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 EAS from the Client directly or obtained by EAS 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 (by e-mail) from EAS, a copy of the Personal Information about the Client retained by EAS and the right to request that EAS correct any incorrect Personal Information.

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- 23.6 EAS will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.7 The Client can make a privacy complaint by contacting EAS via e-mail. EAS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

24. Suspension of Works

- 24.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) EAS has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to EAS by a particular date; and
 - (iv) EAS has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if EAS 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 EAS exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to EAS 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 EAS suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes EAS from continuing the Works or performing or complying with EAS' obligations under this Contract, then without prejudice to EAS' other rights and remedies, EAS 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 EAS 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, EAS 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, EAS 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 EAS may have notice of the Trust, the Client covenants with EAS 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 EAS (EAS 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.

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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 section 26 of 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 Hamilton Courts in New Zealand.
- 27.4 Except to the extent permitted by law "CGA", EAS 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 EAS of these terms and conditions (alternatively EAS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 EAS 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 EAS.
- 27.7 EAS 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 EAS' sub-contractors without the authority of EAS.
- 27.8 The Client agrees that EAS 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 EAS 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.