

CREDIT ACCOUNT APPLICATION

Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

To Be Completed By All Applicants:

CLIENT'S TRADING NAME: _____
CLIENT'S FULL or LEGAL NAME: _____
Phone: _____ Fax: _____
Mobile: _____ Email: _____
Billing Address: _____ Physical Address: _____

Postcode: _____ Postcode: _____

Commercial Clients Only:

Company Reg Number: _____ Date Established: _____
Contact 1: _____ Contact 2: _____
Position: _____ Position: _____
Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)

Full Name: _____ Full Name: _____
Home Address: _____ Home Address: _____

Postcode: _____ Postcode: _____
ID: _____ Date of Birth: _____ ID: _____ Date of Birth: _____
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)
Home Phone: _____ Home Phone: _____

CREDIT / TRADE REFERENCES (Not utilities, lawyers, accountants, fuel cards, credit cards or bank)

Business Name 1: _____ Phone: _____
Business Name 2: _____ Phone: _____
Business Name 3: _____ Phone: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Paton Roofing Services Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

SIGNED (CLIENT): _____ SIGNED (SUPPLIER): _____
Name: _____ Name: _____
Position: _____ Position: _____
Date: _____ Date: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

This is a Credit Account Application Form under the Construction Contracts Act 2002. If you are a "Residential Occupier" please read clause 23 in our Terms and Conditions of Trade

Paton Roofing Services Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means Paton Roofing Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Paton Roofing Services Limited.
- 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Works" means all Works or Materials provided by the Supplier 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).
- 1.4 "Price" means the Price payable for the Works as agreed between the Supplier and the Client in accordance with clause 5 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 provision of any Works.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 These terms and conditions may be meant to be read in conjunction with the Supplier's Hire Form, and:
- (a) where the context so permits, the terms 'Works' or 'Materials' shall include any supply of Equipment, as defined therein; and
- (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Supplier 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 Services 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 the Supplier 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 the Supplier 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 the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Works, Materials, Services or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give the Supplier 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, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Supplier to the Client in respect of Works performed or Materials supplied; or
- (b) the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within twenty-eight (28) days.
- 5.2 The Supplier 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 site, obscured building defects, safety considerations, prerequisite work by any third party not being completed, error in design, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to the Supplier in the cost of labour or Materials, which are beyond the Supplier's control.
- 5.3 At the Supplier's sole discretion, a deposit may be required.
- 5.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on completion of the Works;
- (b) by way of progress payments in accordance with the Supplier'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 site but not yet installed; or
- (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 5.5 Payment may be made by cash, bank cheque, electronic/online banking, or by any other method as agreed to between the Client and the Supplier.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any

provision of Works by the Supplier under this or any other agreement. 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.

6. Provision of the Works

Subject to clause 6.2 it is the Supplier's responsibility to ensure that the Works start as soon as it is reasonably possible. The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier'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 the Supplier that the site is ready; or

(d) safely considerations due adverse weather conditions.

The Supplier may provide the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Any time specified by the Supplier for provision of the Works is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that the Supplier is unable to provide the Works as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.

All Works are undertaken in accordance with current standards as approved and stipulated by the appropriate regulatory body, and/or the manufacturer of the Materials.

7. Access

The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the Works. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier. It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify the Supplier against all costs incurred by the Supplier in recovering such vehicles in the event they become bogged or otherwise immovable.

8. Risk

If the Supplier retains ownership of the Materials under clause 12 then:

(a) where the Supplier 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. At the Supplier's sole discretion the cost of delivery is included in the Price. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Supplier or the Supplier's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

(b) where the Supplier is to both supply and install Materials then the Supplier shall maintain a contract works insurance policy until the Works are completed. Such contract works insurance is solely for Works provided by the Supplier. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

8.2 The Client must take delivery by receipt or collection of the Materials whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Materials as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

8.3 Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Supplier to leave Materials outside the Supplier'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.

8.4 The Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and Works incidental thereto, and the Supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

The Client acknowledges that Materials supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of Materials supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Works is given in good faith, is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Works. The Supplier, its directors, employees and consultants, believe that the information provided to the Client is correct and that any calculations, estimates, conclusions or recommendations contained in any quotation, estimate or similar document are reasonably held or made as at the time of compilation. However, no warranty is made as the accuracy or reliability of any calculations, estimates, conclusions or recommendation (which made change with notice) or other information contained therein and, to the maximum extent permitted by law, the Supplier disclaims all liability and responsibility for any direct or

indirect loss or damage which may be suffered by any recipient thereof relying on anything contained therein or omitted therefrom.

9. Client's Responsibilities

It is the intention of the Supplier and agreed by the Client that it is the responsibility of the Client to ensure there are not obstructions on site near the working area and to provide, and have erected, scaffolding on any area above three (3) metres off ground level (prior to measure), to enable the Works to be undertaken. 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.

The Client acknowledges that in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Supplier against any costs incurred by the Supplier as a consequence of such discovery. Under no circumstances will the Supplier handle removal of asbestos product.

The Supplier is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Client or the Client's agent.

It is further agreed that:

(a) the Client will supply temporary lighting, toilet, eating and first aid facilities if required; and

(b) the Client will advise all amenity locations (including without limitation, water, gas, electricity, telephone or any other underground amenity) to the Supplier prior to commencement of the Works.

Although the Supplier holds Public Liability Insurance and Contract Works Insurance for the Works to be provided under this agreement, it is the Client's responsibility to ensure that the property is fully insured for the duration of the Works. The Supplier's insurance does not extend to cover works provided by other trades.

10. Accuracy of Customer's Plans, Measurements and Designs

In the event that the Client gives information relating to measurements and quantities of the Materials required it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

The Supplier shall not be liable for any errors in the Works which are caused by design fault, or by incorrect or inaccurate data being supplied by the Client. Any additional Works which may be required to rectify such errors shall be the Client's responsibility and shall be charged as a variation in accordance with clause 5.2.

11. Compliance with Laws

The Client and the Supplier 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, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

12. Title

12.1 The Client acknowledges and agrees that the Client's obligations to the Supplier for the provision the Works shall not cease, and ownership of the Materials shall not pass, until:

(a) the Client has paid the Supplier all amounts owing for the particular Works; and

(b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.

12.2 Receipt by the Supplier 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 and until then the Supplier ownership or rights in respect of the Works, and this agreement, shall continue.

12.3 It is further agreed that:

(a) until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request.

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Supplier and must pay to the Supplier 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 the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier 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 the Supplier and must pay or deliver the proceeds to the Supplier 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.

(f) unless the Materials have become fixtures the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials.

(g) the Supplier may recover possession of any Materials in transit whether or not delivery has occurred.

Paton Roofing Services Limited – Terms & Conditions of Trade

- (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 the Supplier.
- (i) the Supplier may commence proceedings to recover the Price notwithstanding that ownership of the Materials has not passed to the Client.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 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 collateral (account) – being a monetary obligation of the Client to the Supplier for Works – previously provided, and that will be provided in the future, by the Supplier to the Client.
- 13.2 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 the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Supplier.
- 13.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 13.1 to 13.5.
- 14. Security and Charge**
- 14.1 In consideration of the Supplier agreeing to provide 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).
- 14.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 14.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
- 15. Client's Disclaimer**
- 15.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.
- 16. Defects**
- 16.1 The Client shall inspect the Works on completion and shall within seven (7) days of such time (being of the essence) notify the Supplier of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Works within a reasonable time following such notification if the Client believes the Works are defective in any way. If the Client shall fail to comply with these provisions the Works shall be presumed to be free from any defect or damage. For defective Works, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) rectifying or re-providing the Works.
- 16.2 Materials will not be accepted for return other than in accordance with 16.1 above.
- 17. Warranties**
- 17.1 Subject to the conditions of warranty set out in clause 17.2, the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within five (5) years of the date of completion (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by clause 17.1 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 the Works; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
- (iii) any use of the Works otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of the Works 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.
- the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.*
- (b) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or
- remedying the workmanship or in properly assessing the Client's claim.*
- 17.3 For Materials not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Supplier 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. Consumer Guarantees Act 1993**
- 18.1 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 provision of Works by the Supplier to the Client.
- 19. Intellectual Property**
- 19.1 Where the Supplier has designed, drawn, written plans or a schedule of Works, or created any Materials for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and Materials shall remain vested in the Supplier, and shall only be used by the Client at the Supplier's discretion.
- 19.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 19.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or digital media of the Works supplied by the Supplier to the Client, or Materials which the Supplier has created for the Client.
- 20. Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, collection agency costs, and bank dishonour fees).
- 20.3 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the provision of Works to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 20.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 21. Cancellation**
- 21.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel the provision of the Works at any time before the Works have commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Client cancels the provision of the Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.3 Cancellation of orders for Materials made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 22. Privacy Act 1993**
- 22.1 The Client authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including 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 the Supplier from the Client directly or obtained by the Supplier 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.
- 22.2 Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.
- 23. Construction Contracts Act 2002**
- 23.1 The Client hereby expressly acknowledges that:
- (a) the Supplier has the right to suspend the Works 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 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 the Supplier by a particular date; and
- (iv) the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Supplier suspends the Works, 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 the Supplier exercises the right to suspend the Works, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; 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 the Supplier suspending the Works under this provision.
- 24. General**
- 24.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier'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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 24.3 The Supplier 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 the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 24.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide any Works to the Client.
- 24.7 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.
- 24.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.