
Rodgers Plumbing Ltd – 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 “RPL” means Rodgers Plumbing Ltd, its successors and assigns or any person acting on behalf of and with the authority of Rodgers Plumbing Ltd.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting RPL to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by RPL to the Customer at the Customer’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 Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to 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 RPL and the Customer in accordance with clause 6 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of 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 Customer acknowledges that the supply of Works on credit shall not take effect until the Customer has completed a credit application with RPL 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 Customers credit limit and/or the account exceeds the payment terms, RPL reserves the right to refuse delivery.
- 2.6 Where the Customer is a tenant (and therefore not the owner of the land and premises where the Works are to be undertaken) then the Customer warrants that it has obtained the full consent of the owner for RPL to provide the Works to the owner’s land and premises. The Customer acknowledges and agrees that it shall be personally liable for full payment of the Price for all Works provided under this contract and to indemnify RPL against any claim made by the owner of the site (howsoever arising) in relation to the provision of the Works by RPL, except where such claim has arisen because of the negligence of RPL when providing the Works.
- 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 Customer acknowledges and accepts that RPL 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 RPL 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 RPL 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 RPL; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 The Customer acknowledges that RPL shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to RPL, that person shall have the full authority of the Customer to order any Works, Materials and/or to request any variation thereto on the Customer’s behalf. The Customer accepts that they will be solely liable to RPL for all additional costs incurred by RPL (including RPL’s profit margin) in providing any Works, Materials or variation/s requested thereto by the Customer’s duly authorised representative.

5. Change in Control

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

6. Price and Payment

- 6.1 At RPL's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by RPL to the Customer in respect of Works performed or Materials supplied; or
 - (b) RPL's quoted Price (subject to clause 6.2) which shall be binding upon RPL provided that the Customer shall accept RPL's quotation in writing within thirty (30) days.
- 6.2 RPL 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, limitations to accessing the site, obscured building defects, incorrect measurements provided by the Customer, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring etc) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to RPL in the cost of labour or materials which are beyond RPL's control.
- 6.3 Variations will be charged for on the basis of RPL's quotation, and will be detailed in writing, and shown as variations on RPL's invoice. The Customer shall be required to respond to any variation submitted by RPL within ten (10) working days. Failure to do so will entitle RPL 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 RPL's 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 Customer on the date/s determined by RPL, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with RPL'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 Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (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 Customer by RPL.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer 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(a) to 18(i) of the Construction Contracts Act 2002.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and RPL.
- 6.8 RPL may in its discretion allocate any payment received from the Customer towards any invoice that RPL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer RPL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by RPL, payment will be deemed to be allocated in such manner as preserves the maximum value of RPL's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by RPL nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by RPL 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 Customer must pay to RPL an amount equal to any GST RPL must pay for any supply by RPL under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is RPL'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 RPL claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond RPL's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify RPL that the site is ready.
- 7.3 RPL 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.
- 7.4 Any time specified by RPL for delivery of the Works is an estimate only and RPL will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that RPL is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then RPL 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 RPL retains ownership of the Materials under clause 12 then:

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- (a) where RPL is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer 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 Customer or the Customer's nominated carrier takes possession of the Materials at RPL's address; or
 - (ii) the Materials are delivered by RPL or RPL's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- (b) where RPL is to both supply and install Materials then RPL 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 Customer.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests RPL to leave Materials outside RPL'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 Customer and it shall be the Customer'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 Customer's expense.
- 8.3 RPL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, RPL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.4 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where RPL is requested to merely clear such blockages, RPL can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, RPL will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.
- 8.5 The Customer acknowledges and agrees that where RPL has performed temporary repairs:
- (a) RPL offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) RPL will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 8.6 Where the Customer has supplied materials for RPL to complete the Works, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. RPL shall not be responsible for any defects in the materials, any loss or damage to the Works (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 8.7 The Customer acknowledges that RPL is only responsible for parts that are replaced by RPL and does not at any stage accept any liability in respect of previous services and/or materials supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify RPL against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 9. Access**
- 9.1 The Customer shall ensure that RPL has clear and free access to the site at all times to enable them to undertake the Works. RPL 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 RPL.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, diggers or other equipment as may be deemed necessary by RPL.
- 10. Underground Locations and Hidden Services**
- 10.1 Prior to RPL commencing the Works the Customer must advise RPL of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst RPL will take all care to avoid damage to any underground services the Customer agrees to indemnify RPL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
- 11. Compliance With Laws**
- 11.1 The Customer and RPL 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 WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 11.3 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") RPL 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 site or where they may be acting as a subcontractor for the Customer who has engaged a third party head contractor.
- 11.4 Prior to commencement of any Works RPL shall carry a routine soundness test of the worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery RPL where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.
- 11.5 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by RPL in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Customer.
- 11.6 The Customer warrants that any existing plumbing, gas fitting and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. RPL reserves the right to halt all Works (in accordance with clause 5.2) if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed RPL will charge a standard fee for the time spent on worksite based on RPL's quotation.

12. Title

- 12.1 RPL and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid RPL all amounts owing to RPL; and
 - (b) the Customer has met all of its other obligations to RPL.
- 12.2 Receipt by RPL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to RPL on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for RPL and must pay to RPL 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 RPL shall be sufficient evidence of RPL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with RPL to make further enquiries;
 - (d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for RPL and must pay or deliver the proceeds to RPL on demand;
 - (e) the Customer should not convert or process the Materials or intermix them with other materials but if the Customer does so then the Customer holds the resulting product on trust for the benefit of RPL and must sell, dispose of or return the resulting product to RPL as it so directs;
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises RPL to enter any premises where RPL believes the Materials are kept and recover possession of the Materials;
 - (g) RPL may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Customer 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 RPL;
 - (i) RPL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Customer to RPL for Works – that have previously been supplied and that will be supplied in the future by RPL to the Customer.
- 13.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RPL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, RPL 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 RPL; and
 - (d) immediately advise RPL 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.
- 13.3 RPL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by RPL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by RPL under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of RPL agreeing to supply the Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies RPL from and against all RPL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RPL's rights under this clause.
- 14.3 The Customer irrevocably appoints RPL and each director of RPL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

15. Defects In Materials

- 15.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify RPL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford RPL an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which RPL has agreed in writing that the Customer is entitled to reject, RPL's liability is limited to either (at RPL's discretion) replacing the Materials or repairing the Materials.
- 15.2 Materials will not be accepted for return other than in accordance with 15.1 above.

16. Returns

- 16.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) RPL has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) RPL 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.
- 16.2 RPL may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Materials plus any freight.
- 16.3 Non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.

17. Warranties

- 17.1 Subject to the conditions of warranty set out in clause 17.2 RPL warrants that if any defect in any workmanship of RPL becomes apparent and is reported to RPL within twelve (12) months of the date of delivery (time being of the essence) then RPL will either (at RPL'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 Customer to properly maintain any Materials; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by RPL; 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 RPL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without RPL's consent.
 - (c) in respect of all claims RPL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 17.3 For Materials not manufactured by RPL, the warranty shall be the current warranty provided by the manufacturer of the Materials. RPL 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.
- 17.4 In the case of second hand Materials, the Customer 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 RPL as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. RPL shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

18. Consumer Guarantees Act 1993

- 18.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by RPL to the Customer.

19. Intellectual Property

- 19.1 Where RPL has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in RPL, and shall only be used by the Customer at RPL's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of RPL.
- 19.2 The Customer warrants that all designs, specifications or instructions given to RPL will not cause RPL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify RPL against any action taken by a third party against RPL in respect of any such infringement.
- 19.3 The Customer agrees that RPL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which RPL has created for the Customer.

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 RPL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes RPL any money the Customer shall indemnify RPL from and against all costs and disbursements incurred by RPL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RPL's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies RPL may have under this Contract, if a Customer has made payment to RPL, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by RPL under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 20.4 Without prejudice to RPL's other remedies at law RPL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to RPL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to RPL becomes overdue, or in RPL's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by RPL;
 - (c) the Customer 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

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(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

21. Cancellation

- 21.1 Without prejudice to any other rights or remedies RPL may have, if at any time the Customer 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 Customer of such notice/s) then RPL may suspend the Works immediately. RPL will not be liable to the Customer for any loss or damage the Customer suffers because RPL has exercised its rights under this clause.
- 21.2 RPL 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 Customer. On giving such notice RPL shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to RPL for Works already performed. RPL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by RPL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by RPL is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. RPL 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"). RPL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by RPL that may result in serious harm to the Customer, RPL will notify the Customer 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 Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to RPL in respect of Cookies where transactions for purchases/orders transpire directly from RPL's website. RPL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to RPL when RPL sends an email to the Customer, so RPL may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via RPL's website.
- 22.3 The Customer authorises RPL or RPL's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by RPL from the Customer directly or obtained by RPL from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.5 The Customer shall have the right to request RPL for a copy of the Personal Information about the Customer retained by RPL and the right to request RPL to correct any incorrect Personal Information about the Customer held by RPL.

23. Suspension of Works

- 23.1 Where the Contract is subject to the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) RPL 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 Customer, 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 Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to RPL by a particular date; and
 - (iv) RPL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if RPL 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 Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the Contract; and

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- (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 RPL exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to RPL under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of RPL suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes RPL from continuing the Works or performing or complying with RPL's obligations under this Contract, then without prejudice to RPL's other rights and remedies, RPL may suspend the Works immediately after serving on the Customer 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 RPL as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, RPL suspends the Works and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, RPL shall be entitled to terminate the Contract, in accordance with clause 21.

24. Service of Notices

- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

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

26. General

- 26.1 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).
- 26.2 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.
- 26.3 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 New Zealand.
- 26.4 RPL shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by RPL of these terms and conditions (alternatively RPL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 26.5 RPL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 26.6 The Customer cannot licence or assign without the written approval of RPL.
- 26.7 RPL 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 Customer agrees and understands that they have no authority to give any instruction to any of RPL's sub-contractors without the authority of RPL.
- 26.8 The Customer agrees that RPL may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for RPL to provide Works to the Customer.
- 26.9 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.
- 26.10 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.