



# CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.  
 This is a Credit Account Application Form under the Construction Contracts Act 2002. Please read clause 24 on the reverse.

<b>Client Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name: <i>(If different from above)</i>				
Physical Address:				Postcode:
Billing Address:				Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
<b>Personal Details:</b> <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No:	
<b>Business Details:</b> <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
Company Number:			Date Incorp. <i>(current owners):</i>	
Nature of Business:				GST No: <i>(if applicable)</i>
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom):</i>				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
<b>Account Terms:</b> <input type="checkbox"/> 20 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO			Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:				
Accounts Contact:				Phone No:
Bank and Branch:				Account No:
<b>Trade References:</b> <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

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 B. Bullock (2009) Limited T/A Bullocks Group 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.

SIGNED (CLIENT): \_\_\_\_\_ SIGNED (CONTRACTOR): \_\_\_\_\_  
 Name: \_\_\_\_\_ Name: \_\_\_\_\_  
 Position: \_\_\_\_\_ Position: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of B. Bullock (2009) Limited T/A Bullocks Group and its successors and assigns ("the Contractor") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply materials and/or works to

\_\_\_\_\_ ("the Client") [Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

- 1. GUARANTEE** the due and punctual payment to the Contractor of all monies which are now owing to the Contractor by the Client and all further sums of money from time to time owing to the Contractor by the Client in respect of materials and works supplied or to be supplied by the Contractor to the Client or any other liability of the Client to the Contractor, and the due observance and performance by the Client of all its obligations contained or implied in any contract or agreement with the Contractor, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to the Contractor, the Guarantor will immediately on demand pay the relevant amount to the Contractor. In consideration of the Contractor agreeing to supply the materials and/or works to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under this Guarantee and Indemnity (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to the Contractor registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints the Contractor and each director of the Contractor as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Contractor may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
- 2. HOLD HARMLESS AND INDEMNIFY** the Contractor on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Contractor in connection with:
  - (a) the supply of materials and/or works to the Client; or
  - (b) the recovery of monies owing to the Contractor by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to the Contractor's nominees' costs of collection and legal costs; or
  - (c) monies paid by the Contractor with the Client's consent in settlement of a dispute that arises or results from a dispute between, the Contractor, the Client, and a third party or any combination thereof, over the supply of materials and/or works by the Contractor to the Client.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

- 3. I/We have received, read, and understood the Contractor's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- 4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all monies owing to the Contractor by the Client and all obligations herein have been fully paid satisfied and performed.**
- 5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence, or neglect to sue on the Contractor's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Contractor, each Guarantor shall be a principal debtor and liable to the Contractor accordingly.**
- 6. The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced, or affected by:**
  - (a) any alteration, modification, variation or addition to any contract or agreement in respect of the supply of materials and/or services;
  - (a) the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Client;
  - (b) any other act, omission, or event which, but for this provision, might operate to discharge, impair, or otherwise affect any obligations under this Guarantee and Indemnity of any of the rights, powers or remedies conferred by this Guarantee and Indemnity or by law.
- 7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean, and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.**
- 8. I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to the Contractor.**
- 9. I/we irrevocably authorise the Contractor to obtain from any person or company any information which the Contractor may require for credit reference purposes. I/We further irrevocably authorise the Contractor to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Contractor as a result of this Guarantee and Indemnity being actioned by the Contractor.**
- 10. The above information is to be used by the Contractor for all purposes in connection with the Contractor considering this Guarantee and Indemnity and the subsequent enforcement of the same.**

**For and on behalf of the Client I/We confirm I/We have read, understood, and accept the terms of this Guarantee and Indemnity, and I/We agree to be bound by this Guarantee and Indemnity.**

<p><b>GUARANTOR-1</b>          SIGNED: _____          FULL NAME: _____          HOME ADDRESS: _____          DATE OF BIRTH: _____          SIGNATURE OF WITNESS: _____          NAME OF WITNESS: _____          OCCUPATION: _____          PRESENT ADDRESS: _____          EXECUTED as a Deed this _____ day of _____ 20____</p>
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<p><b>GUARANTOR-2</b>          SIGNED: _____          FULL NAME: _____          HOME ADDRESS: _____          DATE OF BIRTH: _____          SIGNATURE OF WITNESS: _____          NAME OF WITNESS: _____          OCCUPATION: _____          PRESENT ADDRESS: _____          EXECUTED as a Deed this _____ day of _____ 20____</p>
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- Note: 1. If the Client is a proprietary limited company, the Guarantor(s) must be the director(s) of the company.  
 2. If the Client is a limited partnership, the Guarantor(s) must be the general partners  
 3. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).  
 4. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

## B. Bullock (2009) Limited T/A Bullocks Group – Terms & Conditions of Trade

1.	<b>Definitions</b>	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 Contractor in writing of the parameters of the limited authority granted to their representative. The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Materials, Works or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	7.2	The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including, but not limited to, government interference, industrial dispute, breakdown of Plant, transport delays, accidents, or any failure by the Client to:	(a) the curing time for concrete can be affected by elements such as temperature or the weather as such the Contractor offers no guarantee as to the length of time the curing process will take;
1.2	"Client" means the person's, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:	3.3				(b) the Contractor offers no guarantee against cracking of concrete; and
	(a) if there is more than one Client, is a reference to each Client jointly and severally; and					(c) the Contractor shall act in accordance with the Client's instructions and therefore the Contractor shall not be liable for any loss or damage arising from following the Client's instructions.
	(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.	4.1				
1.3	"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.	4.				
1.4	"Contractor" means B. Bullock (2009) Limited T/A Bullocks Group, its successors and assigns.	4.2				
1.5	"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 the Contractor's 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.	5.1				
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.	6.				
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:	6.1				
	(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	"Plant" means all stationary and mobile equipment (including all associated accessories, attachments, ancillary equipment, machinery, motor vehicles and agitators).	6.2				
1.9	"Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 6 below.	6.2				
1.10	"Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor 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).	6.2				
1.11	"Worksite" means the address nominated by the Client to which the Materials are to be supplied by the Contractor.	6.3				
2.	<b>Acceptance</b>	6.3				
2.1	The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.	6.4				
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.	6.4				
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.	6.4				
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 the Contractor and it has been approved with a credit limit established for the account.	6.4				
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, the Contractor reserves the right to refuse delivery.	6.4				
2.6	In the event of a mechanical breakdown of the Plant, the Contractor shall make every reasonable effort to repair the Plant or to supply other Plant to complete the Works. In the event of such breakdown, the liability of the Contractor whether in contract, tort or otherwise shall be specifically limited to a maximum amount of damages equal to the Price of the Works accrued up to the time of the breakdown. The Contractor shall not be liable for any loss whatsoever suffered by the Client or others. The Contractor shall not be liable for any loss caused by the breakdown of the Plant due to defective or un-pumpable concrete.	6.5				
2.7	In the event that the Contractor is required to provide the Works outside the Contractor's standard working hours of operation, (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays), then the Contractor reserves the right to charge the Client additional labour charges (penalty rates will apply), unless otherwise agreed between the Contractor and the Client. The Client further acknowledges that the operating hours of the Plant may be subject to statutory requirements.	6.6				
2.8	The Client accepts and acknowledges that the Contractor shall only supply the Plant in accordance with the Client's booking and shall transfer concrete supplied at ground level to such parts of the Worksite as the Client shall direct. This shall be affected by pipeline from a portable pumping Plant.	6.6				
2.9	The Client further accepts that the Contractor will supply, and the Client will receive the Plant at the kerb alignment. If at the Client's request the Plant enters the Worksite, the Client will indemnify and hold indemnified the Contractor, its servants, and agents against all liability and against all actions, suits, proceedings, claims, demands, costs and expenses incurred by the Contractor to its servants or its agents out of or in any way relating to the presence of the Plant on the Worksite.	6.7				
2.10	Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied (including, but not limited to, the suitability of the Worksite for the laying of concrete slabs, foundations or similar Works) is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.	6.9				
2.11	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.	6.10				
3.	<b>Authorised Representatives</b>	6.10				
3.1	Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Contractor 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 the Contractor in writing that said person is no longer the Client's duly authorised representative).	7.1				
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# B. Bullock (2009) Limited T/A Bullocks Group – Terms & Conditions of Trade

<p>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 the Contractor's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then the Contractor 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 incurred in accordance with clause 6.2.</p> <p>17.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.</p> <p>17.3 Notwithstanding clause 12.1 and pursuant to the Health &amp; Safety at Work Act 2015 (the "HSW Act"), the Contractor agrees at all times to comply with sections 28 and 34 of the HSW Act with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.</p>	<p>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.</p> <p>20.2 Defects The Client shall inspect the Materials on delivery and shall within three (3) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor 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 the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials or repairing the Materials.</p> <p>20.3 Materials will not be accepted for return other than in accordance with 17.1 above.</p> <p>20.4 Warranties Subject to the conditions of warranty set out in clause 18.2 the Contractor warrants that if any defect in any workmanship provided by the Contractor becomes apparent and is reported to the Contractor within six (6) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the defect.</p> <p>20.5 The conditions applicable to the warranty given by clause 18.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) failure on the part of the Client to properly maintain any Materials or serviced item; or</p> <p>(ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or</p> <p>(iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or</p> <p>(iv) the continued use of any Materials or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or</p> <p>(v) fair wear and tear, accident or act of God.</p> <p>(b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.</p> <p>(c) in respect of all claims the Contractor 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.</p> <p>20.6 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.</p>	<p>the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>21.2 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 the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>21.3 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.</p> <p>21.4 Privacy Policy All emails, documents, images, or other recorded information held or used by the Contractor is "Personal Information" as defined and referred to in clause 23.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure, and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.</p> <p>21.5 Notwithstanding clause 23.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor 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:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information").</p> <p>21.6 If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>21.7 The Client authorises the Contractor or the Contractor's agent to:</p> <p>(a) access, collect, retain and use any information about the Client: (i) (including name, address, D.O.B, occupation, driver's 21.8 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.</p> <p>21.9 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020. The Client shall have the right to request (by e-mail) from the Contractor, a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information.</p> <p>21.10 The Contractor 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.</p> <p>21.11 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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 Privacy Commissioner at <a href="http://www.privacy.org.nz">http://www.privacy.org.nz</a>.</p>	<p>if pursuant to any right conferred by this Contract, the Contractor 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, the Contractor shall be entitled to terminate the Contract, in accordance with clause 22.</p> <p>22.1 Service of Notices Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(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;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>22.2 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.</p> <p>22.3 Trusts If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(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;</p> <p>(c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>22.4 General 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).</p> <p>22.5 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.</p> <p>22.6 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.</p> <p>22.7 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 Wanganui, New Zealand.</p> <p>22.8 Subject to the CGA, the Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).</p> <p>22.9 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.</p> <p>22.10 The Client cannot licence or assign without the written approval of the Contractor.</p> <p>22.11 The Contractor 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 the Contractor's sub-contractors without the authority of the Contractor.</p> <p>22.12 The Client agrees that the Contractor 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 the Contractor to provide Works to the Client.</p> <p>22.13 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Contractor.</p> <p>22.14 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.</p>
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