
King Flooring Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting King to provide the Works as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 **“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.
- 1.3 **“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 King’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.**
- 1.4 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.5 **“King”** means King Flooring Limited, its successors and assigns.
- 1.6 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between King and the Client in accordance with clause 6 below.
- 1.8 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by King 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).
- 1.9 **“Worksite”** means the address nominated by the Client to which the Materials are to be supplied by King.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Works on credit shall not take effect until the Client has completed a credit application with King and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, King reserves the right to refuse delivery; and
 - (c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, King reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases King will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order and/or Works on hold, as per clause 7.2 until such time as King and the Client agree to such changes.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

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

4. Errors and Omissions

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

5. Change in Control

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

6. Price and Payment

- 6.1 At King's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by King to the Client in respect of Works performed or Materials supplied; or
 - (b) King's Price at the date of delivery of the Works according to King's current price list; or
 - (c) King's quoted Price (subject to clause 6.2) which shall be binding upon King provided that the Client shall accept King's quotation in writing within thirty (30) days.
- 6.2 King 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 Worksite, availability of machinery, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality, preparation of the floor, rotten floor boards, subfloor condition, cleaning, extra rooms, additional Materials required, take-up and disposal of old floor coverings etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to King in the cost of labour or materials which are beyond King's control.
- 6.3 Variations will be charged for on the basis of King's quotation, and will be detailed in writing, and shown as variations on King's invoice. The Client shall be required to respond to any variation submitted by King within ten (10) working days. Failure to do so will entitle King 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 King's sole discretion a deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by King, which may be:
- (a) by way of progress payments in accordance with King'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;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by King.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be use other than to remedy defects in the performance of King's obligations under the Contract.
- 6.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and King.
- 6.8 King may in its discretion allocate any payment received from the Client towards any invoice that King determines and may do so at the time of receipt or at any time afterwards. On any default by the Client King may re-allocate any payments previously received and allocated. In the absence of any payment allocation by King, payment will be deemed to be allocated in such manner as preserves the maximum value of King's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by King nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by King is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Client from the ability to dispute any invoice.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to King an amount equal to any GST King must pay for any supply by King under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is King'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 King claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond King's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify King that the Worksite is ready.
- 7.3 At King's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 King 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.
- 7.5 Any time specified by King for delivery of the Works is an estimate only and King will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that King is unable to supply the Works as agreed solely due to any action or inaction of the Client, then King 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 King retains ownership of the Materials under clause 13 then:
- (a) where King is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:

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- (i) the Client or the Client's nominated carrier takes possession of the Materials at King's address; or
 - (ii) the Materials are delivered by King or King's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) unless otherwise agreed, where King is to both supply and install Materials then King shall maintain a Contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests King to leave Materials outside King's premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 The Client warrants that the flooring of the premises in or upon which these Materials are to be installed or erected is sound and will sustain the installation and Works incidental thereto and King 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.
- 8.4 King shall be entitled to rely on the accuracy of any plans, specifications or other reports and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, King accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, reports or other information.
- 8.5 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities before the Client or King places an order based on these measurements and quantities. King accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 8.6 The Client acknowledges and accepts that:
- (a) skirting boards/kick boards may exhibit some markings on these surfaces due to the necessity of high-speed sanding equipment to be operated right up to the skirting to achieve the best possible result;
 - (b) gaps between boards may cause 'quilting';
 - (c) swirling marks from rotary equipment is a normal part of the sanding process and can be visible under certain lighting;
 - (d) cupping of timber can occur after sanding and polishing due to moisture levels in timber; and
 - (e) edge bonding is a consequence of timber shrinkage and the boards been stuck together with the polyurethane and is not a result of the Works provided by King.
- 8.7 The Client further acknowledges and accepts that Materials supplied may exhibit variations in shade tone, colour, texture, surface, and finish, and may fade or change colour over time. King will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.8 King shall not be liable if the Client does not follow King' recommendation to have:
- (a) no foot traffic on the flooring for a minimum of twenty-four (24) hours but preferably seven (7) days;
 - (b) no furniture to be placed on floor for a minimum of forty-eight (48) hours; and
 - (c) felt to be placed under furniture legs to reduce any damage by impact or scratching.
- 8.9 The Client agrees to indemnify King from any damage caused by any other tradesmen during and after the completion of the Works. If the Client instructs King to rectify any damage caused by any other tradesmen, this will become a variation and shall be charged in accordance with clause 6.2.
- 8.10 King will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating, or large expanses of glass windows without curtains or blinds.
- 8.11 Whilst King will take all due care to avoid contamination of the finished surface, King accepts no responsibility for contamination by natural contaminates such as dust or hair which may be present at the Worksite.
- 8.12 On completion of the Works, King shall provide the Client with maintenance and cleaning instructions. Failure by the Client to adhere to said instructions may invalidate the warranty.
- Carpet Risk**
- 8.13 The Client acknowledges and accept that;
- (a) whilst carpet manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied;
 - (b) carpet manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
 - (c) the installation process for carpet may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.
- Timber Risk**
- 8.14 The Client acknowledges and accepts that:
- (a) timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst King will make every effort to match sales samples to the finished Materials King accepts no liability whatsoever where such samples differ to the finished Materials supplied;
 - (b) timber is also a hydroscopic material subject to expansion and contraction; therefore, King will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods; and
 - (c) King will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.
- Vinyl or Cork Tile Flooring Risk**
- 8.15 The Client acknowledges and agrees that:
- (a) vinyl will not fully seal a floor around the edges particularly around showers or baths; the Client also agrees water can get underneath and therefore bubble and/or discolour the vinyl. King shall not be held liable for any loss, damages or costs however arising due to the same;
 - (b) whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor;

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- (c) King does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in bison board, or thin line board will show through the vinyl;
- (d) King shall advise the Client if King believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the vinyl to bubble and discolour) however the Client acknowledges that it is not always possible to identify such problems therefore the Client agrees that King shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Materials;
- (e) King shall not be liable for any loss, damages or costs however arising in the event that:
 - (i) a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible Material;
 - (ii) an object is dragged across it as vinyl can rip and tear; or
 - (iii) the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).

9. Client's Responsibilities

9.1 It is the Client's responsibility to:

- (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation;
- (b) remove all existing floor coverings, tacks, and staples;
- (c) fully disclose any information that may affect King's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa);
- (d) ensure the sub-floor is adequately ventilated and is structurally sound;
- (e) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness;
- (f) remove all fragile items such as glassware, crockery, pot plants, appliances, furniture, and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by King in this regard;
- (g) provide adequate dust sheets to protect the Client's furniture and décor. King will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Client, until the coatings are dry;
- (h) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc.;
- (i) supply power to within eight (8) metres of the project;
- (j) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding works commencing and are made available for use at no cost for the duration of the project. Any costs incurred by King will be invoiced to the Client should this requirement not be met; and
- (k) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between King and the Client, any additional costs will be invoiced to the Client as an extra.

9.2 King is not insured to remove furniture or fittings and will not do so, nor is King licensed to move gas or electrical appliances.

10. Worksite Access and Condition

10.1 King is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by King will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.

10.2 It is the intention of King and agreed by the Client that:

- (a) the Client shall ensure that King has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). King shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of King;
- (b) it is the Client's responsibility to provide King, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
- (c) where King requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply King a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft, or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

10.3 The Client agrees to be present at the Worksite when and as reasonably requested by King and its employees, contractors and/or agents.

10.4 *Worksite Inductions*

- (a) in the event the Client requires an employee or sub-contractor of King to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay King's standard (and/or overtime, if applicable) hourly labour rate; or
- (b) where King is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out King's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by King.

11. Underground Locations

11.1 Prior to King commencing any work the Client must advise King of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.

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- 11.2 Whilst King will take all care to avoid damage to any underground services the Client agrees to indemnify King 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 11.1.
- 12. Compliance with Laws**
- 12.1 The Client and King 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.
- 12.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 12.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 12.4 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), King 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.
- 13. Title**
- 13.1 King and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid King all amounts owing to King; and
 - (b) the Client has met all of its other obligations to King.
- 13.2 Receipt by King of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to King on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for King and must pay to King 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 King shall be sufficient evidence of King's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with King 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 King and must pay or deliver the proceeds to King 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 King and must sell, dispose of or return the resulting product to King as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises King to enter any premises where King believes the Materials are kept and recover possession of the Materials;
 - (g) King may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of King; and
 - (i) King may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 14. Personal Property Securities Act 1999 ("PPSA")**
- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by King to the Client and the proceeds from such Materials as listed by King to the Client in invoices rendered from time to time.
- 14.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which King may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, King 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 or the proceeds of such Materials in favour of a third party without the prior written consent of King; and
 - (d) immediately advise King of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.3 King and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by King, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by King under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of King agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies King from and against all King's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising King's rights under this clause.
- 15.3 The Client irrevocably appoints King and each director of King as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects and Returns

- 16.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify King of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford King 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 King has agreed in writing that the Client is entitled to reject, King's liability is limited to either (at King's discretion) replacing the Materials or repairing the Materials.
- 16.2 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
 - (b) King has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) King 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.
- 16.3 King may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty five percent (25%) of the value of the returned Materials plus any freight.
- 16.4 Subject to clause 16.1, non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

17. Warranties

- 17.1 For Materials not manufactured by King, the warranty shall be the current warranty provided by the manufacturer of the Materials. King 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 ("CGA") do not apply to the supply of Materials by King to the Client.

19. Intellectual Property

- 19.1 The Client agrees that King may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which King 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 King'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 King any money the Client shall indemnify King from and against all costs and disbursements incurred by King in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, King's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies King may have under this Contract, if a Client has made payment to King, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by King under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to King's other remedies at law King shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to King shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to King becomes overdue, or in King's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by King;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

- 21.1 Without prejudice to any other rights or remedies King may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then King may suspend or terminate the supply of the Works. King will not be liable to the Client for any loss or damage the Client suffers because King has exercised its rights under this clause.

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- 21.2 King may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice King shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to King for Works already performed. King shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by King 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 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 Policy

- 22.1 All emails, documents, images, or other recorded information held or used by King is "**Personal Information**" as defined and referred to in clause 22.3 and therefore considered confidential. King 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. King acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by King that may result in serious harm to the Client, King 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.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to King in respect of Cookies where the Client utilises King's website to make enquiries. King agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to King when King sends an email to the Client, so King may collect and review that information ("collectively Personal Information")

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

- 22.3 The Client authorises King or King's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by King from the Client directly or obtained by King 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.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Client shall have the right to request (by e-mail) from King, a copy of the Personal Information about the Client retained by King and the right to request that King correct any incorrect Personal Information.
- 22.6 King 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.
- 22.7 The Client can make a privacy complaint by contacting King via e-mail. King 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 <http://www.privacy.org.nz>.

23. Suspension of Works

- 23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) King has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to King by a particular date; and
 - (iv) King has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if King suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if King exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to King under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of King suspending work under this provision;

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- (d) due to any act or omission by the Client, the Client effectively precludes King from continuing the Works or performing or complying with King's obligations under this Contract, then without prejudice to King's other rights and remedies, King may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by King as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, King 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, King 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 Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not King may have notice of the Trust, the Client covenants with King as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of King (King will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 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 section 26 of 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 Tauranga Courts of New Zealand.
- 26.4 Subject to the CGA, King 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 King of these terms and conditions (alternatively King's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 26.5 King may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of King.
- 26.7 King 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 King's sub-contractors without the authority of King.
- 26.8 The Client agrees that King 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 King to provide Works to the Client.
- 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, 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 King.
- 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.