

**1. Definitions**

- 1.1 “Acon” means Acon Industries 2015 Limited T/A Acon Industries, its successors and assigns or any person acting on behalf of and with the authority of Acon Industries 2015 Limited T/A Acon Industries.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting Acon 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 part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Works” means all Works or Materials supplied by Acon to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between Acon and the Client in accordance with clause 5 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and Acon.
- 2.3 The Client acknowledges and accepts that the Price stated may be subject to revision on the basis of the movement in the Consumer Price Index (CPI) or other industry weighted indices published by Stats NZ.
- 2.4 In the event that Acon is required to provide the Works urgently, that may require Acon’s staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Acon reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Acon and the Client.
- 2.5 Any advice, recommendation, information, assistance or service provided by Acon in relation to Works or Materials supplied is given in good faith, is based on Acon’s own knowledge and experience and shall be accepted without liability on the part of Acon and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Works or Materials.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Errors and Omissions**

- 3.1 The Client acknowledges and accepts that Acon 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 Acon 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 Acon 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 Acon; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Change in Control**

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

**5. Price and Payment**

- 5.1 At Acon’s sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by Acon to the Client in respect of Works performed or Materials supplied; or
  - (b) Acon’s Price at the date of delivery of the Works according to Acon’s current pricelist; or
  - (c) Acon’s quoted Price (subject to clause 5.2) which shall be binding upon Acon provided that the Client shall accept Acon’s quotation in writing within thirty (30) days.
- 5.2 Acon reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, additional site visits, availability of machinery, inadequate base preparation (such as uneven or low base work), underground services and foreign materials (as per clause 11), safety considerations, prerequisite work by any third party not being completed, hard rock or other barriers below the surface, latent soil conditions, or hidden pipes, and wiring etc.) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to Acon in the cost of labour or materials (including, but not limited to currency exchange rates or increases to Acon in the cost of taxes, levies) which are beyond Acon’s control.
- 5.3 Variations will be charged for on the basis of Acon’s quotation, and will be detailed in writing, and shown as variations on Acon’s invoice. The Client shall be required to respond to any variation submitted by Acon within ten (10) working days. Failure to do so will entitle Acon 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.
- 5.4 At Acon’s sole discretion a deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Acon, which may be:

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- (a) by way of progress payments in accordance with Acon'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) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Acon.
- 5.6 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 are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 5.7 Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Acon.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Acon nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Acon an amount equal to any GST Acon must pay for any supply by Acon under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Works**
- 6.1 Subject to clause 6.2 it is Acon's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Acon claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Acon's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify Acon that the site is ready.
- 6.3 At Acon's sole discretion the cost of delivery is in addition to the Price.
- 6.4 Acon 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.
- 6.5 Any time specified by Acon for delivery of the Works is an estimate only and Acon 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 Acon is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Acon 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.
- 7. Risk**
- 7.1 If Acon retains ownership of the Materials under clause 15 then:
- (a) where Acon is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Client or the Client's nominated carrier takes possession of the Materials at Acon's address; or
    - (ii) the Materials are delivered by Acon or Acon's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where Acon is to both supply and install Materials then Acon 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.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Acon to leave Materials outside Acon'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.
- 7.3 In the event that during the course of the Works Acon discovers any undisclosed waste and/or hazardous materials then Acon reserves the right to halt all Works and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that Acon agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 5.2 and shall be in addition to the Price. Acon's under no circumstances shall undertake the removal of asbestos.
- 7.4 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Acon is requested to merely clear such blockages, Acon can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Acon will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 7.5 In the event that during the course of the Works Acon's discovers any fossils, artefacts or any other remains of geological or archaeological interest then Acon's reserves the right to halt all Works and immediately notify the Client. The Client accepts and agrees that all additional costs that may be incurred by Acon's as a result of any such delays shall be borne by the Client and shall be treated as a variation in accordance with clause 5.2.
- 7.6 Where Acon gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the worksite for the laying of bitumen based products or profiling Works and such advice or recommendations are not acted upon then Acon shall require the Client or their agent to authorise commencement of the Works in writing. Acon shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 7.7 The Client acknowledges that variations of colour and texture are inherent in all bitumen based products, concrete and natural stone. While every effort will be taken by Acon to match colour or texture of the product, Acon shall not be liable for any loss, damages or costs

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- howsoever arising resulting from any variation in colour or texture between batches of product or sale samples and the final product supplied.
- 7.8 Where the Client has supplied materials for Acon to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Acon shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.9 Acon gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of bitumen based or concrete products such as:
- (a) hairline cracking of paving and grout; or
  - (b) damage caused by contact with chemicals, solvents, oils or any other substances; or
  - (c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 7.10 The Client acknowledges and accepts that the finish Works shall have a minimum grade/crossfall of one percent (1%) to prevent pooling, and shall not be deemed to be a defect.
- 7.11 The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the surface and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the surface is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 7.12 The Client accepts that where earthmoving or excavation work has been provided by a third party engaged by the Client and such work is found to be defective or not up to standard, then Acon reserves the right to charge a variation to remedy such work.
- 7.13 The Client acknowledges that where Acon is engaged to repair and/or replace a damaged asphalt or concrete surface that Acon is only responsible for that portion of Works. Acon does not at any stage accept any liability in respect of previous Works carried out by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify Acon against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 7.14 Acon shall not be liable for any movement due to consolidation or the movement of soil below the treated surface.
- 7.15 Acon shall not be held liable for the shrinkage of asphalt on any ground works not prepared by Acon
- 7.16 The Client acknowledges and accepts that Acon shall be entitled to suspend the Works where forecasted wind speeds from the New Zealand Met Service confirms with the definition of gale force winds, being winds of up to 63-75kph.
- 8. Measurement of Bitumen Based Products and Concrete**
- 8.1 At the completion of the Works the Client or the representative of the Client shall be in attendance and the Works shall then be duly measured. In the absence of either the Client or their representative Acon shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the works completed.
- 9. Accuracy of Client's Plans**
- 9.1 The Client warrants that the plans, specifications (including CAD plans, geotech reports etc.) and other information provided by the Client to Acon are accurate. The Client acknowledges and agrees that in the event that any plans, specifications (including CAD plans) or information provided by the Client is inaccurate:
- (a) Acon accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
  - (b) Acon is entitled to suspend or terminate the supply of Materials or Works to the Client if there is a material change to the scope of Works as a result of inaccurate plans, specifications or other information;
  - (c) the Client shall be liable for Acon's costs of de-mobilisation or re-mobilisation of any plant, equipment or staff to or from the worksite, upon the re-commencement of the Works at the worksite, if applicable; and
  - (d) Acon will not be liable to the Client for any loss or damage the Client suffers because Acon has exercised its rights under this clause.
- 10. Access**
- 10.1 The Client shall ensure that Acon has clear and free access to the worksite (including, but not limited to traffic control within the vicinity of the Works, if so required shall be the Client's responsibility and at the Client expense) at all times to enable them to undertake the Works. Acon shall not be liable for any loss or damage to the site unless due to the negligence of Acon.
- 10.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, or other heavy equipment as may be deemed necessary by Acon. The Client agrees to indemnify Acon against all costs incurred by Acon in recovering such vehicles in the event they become bogged or otherwise immovable.
- 11. Underground Locations**
- 11.1 Prior to Acon commencing any work the Client must advise Acon of the precise location of all underground services on the site 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 site.
- 11.2 Whilst Acon will take all care to avoid damage to any underground services the Client agrees to indemnify Acon 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. Detailed drawings of any services that will be embedded in the concrete are to be provided to Acon prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by Acon for damage to the services or any other element embedded in the concrete.
- 12. Compliance with Laws**
- 12.1 The Client and Acon 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 work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

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- 12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 12.3 Acon has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, Acon shall not be the person who controls the place of work in terms of the HSW Act.
- 13. Outside Agents**
- 13.1 Acon shall not be held responsible for any damage to the Works caused by outside agents. Where the Client requests Acon to repair such damage then Acon reserves the right to charge the Client for any costs incurred in rectifying such damage.
- 14. Insurance**
- 14.1 Acon shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.
- 15. Title**
- 15.1 Acon and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Acon all amounts owing to Acon; and
  - (b) the Client has met all of its other obligations to Acon.
- 15.2 Receipt by Acon 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.
- 15.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 15.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Acon on request;
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Acon and must pay to Acon 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 Acon shall be sufficient evidence of Acon's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Acon 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 Acon and must pay or deliver the proceeds to Acon 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 Acon and must sell, dispose of or return the resulting product to Acon as it so directs;
  - (f) unless the Materials have become fixtures the Client irrevocably authorises Acon to enter any premises where Acon believes the Materials are kept and recover possession of the Materials;
  - (g) Acon 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 Acon;
  - (i) Acon may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 16. Personal Property Securities Act 1999 ("PPSA")**
- 16.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to Acon for Works – that have previously been supplied and that will be supplied in the future by Acon to the Client.
- 16.2 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 Acon may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Acon 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 Acon; and
  - (d) immediately advise Acon 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.
- 16.3 Acon and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by Acon, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Client shall unconditionally ratify any actions taken by Acon under clauses 16.1 to 16.5.
- 17. Security and Charge**
- 17.1 In consideration of Acon agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Client indemnifies Acon from and against all Acon's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Acon's rights under this clause.

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17.3 The Client irrevocably appoints Acon and each director of Acon as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

**18. Defects In Materials**

18.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify Acon of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Acon 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 Acon has agreed in writing that the Client is entitled to reject, Acon's liability is limited to either (at Acon's discretion) replacing the Materials or repairing the Materials.

18.2 Materials will not be accepted for return other than in accordance with 18.1 above.

**19. Returns**

19.1 Returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 18.1; and
- (b) Acon 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) Acon 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.

19.2 Acon 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.

19.3 Returned Materials may (at Acon's sole discretion), incur restocking and handling fees.

19.4 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

**20. Warranties**

20.1 For Materials not manufactured by Acon, the warranty shall be the current warranty provided by the manufacturer of the Materials. Acon 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.

**21. Consumer Guarantees Act 1993**

21.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Acon to the Client.

**22. Default and Consequences of Default**

22.1 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 Acon's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

22.3 Further to any other rights or remedies Acon may have under this contract, if a Client has made payment to Acon, 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 Acon under this clause 22, 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.

22.4 Without prejudice to Acon's other remedies at law Acon shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Acon shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Acon becomes overdue, or in Acon'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 Acon;
- (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.

**23. Cancellation**

23.1 Without prejudice to any other remedies Acon may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Acon may suspend or terminate the supply of Works to the Client. Acon will not be liable to the Client for any loss or damage the Client suffers because Acon has exercised its rights under this clause.

23.2 Acon 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 Acon shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Acon for Works already performed. Acon shall not be liable for any loss or damage whatsoever arising from such cancellation.

23.3 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 Acon as a direct result of the cancellation (including, but not limited to, any loss of profits).

23.4 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.

**24. Privacy Act 1993**

- 24.1 The Client authorises Acon or Acon's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by Acon from the Client directly or obtained by Acon 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.
- 24.2 Where the Client is an individual the authorities under clause 24.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.3 The Client shall have the right to request Acon for a copy of the information about the Client retained by Acon and the right to request Acon to correct any incorrect information about the Client held by Acon.

**25. Construction Contracts Act 2002**

- 25.1 The Client hereby expressly acknowledges that:
- (a) Acon 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 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 Acon by a particular date; and
    - (iv) Acon has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if Acon 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 Acon exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to Acon 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 Acon suspending work under this provision.

**26. Service of Notices**

- 26.1 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.
- 26.2 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.

**27. Trusts**

- 27.1 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 Acon may have notice of the Trust, the Client covenants with Acon 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 Acon (Acon 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.

**28. General**

- 28.1 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).
- 28.2 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.

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- 28.3 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.
- 28.4 Acon 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 Acon of these terms and conditions (alternatively Acon's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 28.5 Acon may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 28.6 The Client cannot licence or assign without the written approval of Acon.
- 28.7 Acon 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 Acon's sub-contractors without the authority of Acon.
- 28.8 The Client agrees that Acon may amend these terms and conditions by notifying 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 Acon to provide Works to the Client.
- 28.9 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.
- 28.10 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.