

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "HSE" means Heatspec Electrical Limited, its successors and assigns or any person acting on behalf of and with the authority of Heatspec Electrical Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting HSE 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.
- 1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by HSE 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).
- 1.5 "Worksite" means the address nominated by the Client to which the Materials are to be supplied by HSE.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "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 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 HSE'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.
- 1.8 "Price" means the Price payable (plus any Goods and Services Tax ("GST")) where applicable) for the Works as agreed between HSE and the Client in accordance with clause 6 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 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 that the supply of Works on credit shall not take effect until the Client has completed a Client Information Form with HSE and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, HSE reserves the right to refuse delivery.
- 2.6 In the event that HSE is required to provide the Works urgently, that may require HSE to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then HSE reserves the right to charge the Client a minimum call out fee based on HSE's standard hourly labour rate, plus travel, plus Materials, unless otherwise agreed between HSE and the Client.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that HSE 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 HSE 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 HSE 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 HSE; 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 HSE 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 details, change of director/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by HSE as a result of the Client's failure to comply with this clause.

5. Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to HSE 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 HSE in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise HSE in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to HSE for all additional costs incurred by HSE (including HSE's profit margin) in providing any Works, Materials or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. Price and Payment

- 6.1 At HSE's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by HSE to the Client in respect of Works performed or Materials supplied; or
 - (b) HSE's quoted Price (subject to clause 6.2) which shall be binding upon HSE provided that the Client shall accept HSE's quotation in writing within thirty (30) days.
- 6.2 HSE 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, obscured building/Worksite defects, incorrect measurements, change in methodology, work outside normal business hours, 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 or non-compliant to the building code, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to HSE in the cost of labour or materials which are beyond HSE's control.

- 6.3 Variations will be charged for on the basis of HSE's quotation, and will be detailed in writing, and shown as variations on HSE's invoice. The Client shall be required to respond to any variation submitted by HSE within ten (10) working days. Failure to do so will entitle HSE 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 HSE's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by HSE, which may be:
- (a) by way of progress payments in accordance with HSE'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; or
 - (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; or
 - (c) for approved credit account holders fourteen (14) days following the date of any invoice; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by HSE.
- 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 Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015.
- 6.7 Payment may be made by electronic/on-line banking, cash, cheques, EFTPOS, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Client and HSE.
- 6.8 HSE may in its discretion allocate any payment received from the Client towards any invoice that HSE determines and may do so at the time of receipt or at any time afterwards. On any default by the Client HSE may re-allocate any payments previously received and allocated. In the absence of any payment allocation by HSE, payment will be deemed to be allocated in such manner as preserves the maximum value of HSE'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 HSE nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by HSE is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to HSE an amount equal to any GST, HSE must pay for any supply by HSE 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 7.1 it is HSE'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 HSE claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond HSE's control, including but not limited to delays caused by any other third party suppliers that impacts on the provision of the Works and any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify HSE that the Worksite is ready.
- 7.3 At HSE's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 HSE 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 HSE for delivery of the Works is an estimate only and HSE 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 HSE is unable to supply the Works as agreed solely due to any action or inaction of the Client, then HSE 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. Worksite Access and Condition

- 8.1 HSE is not responsible for the removal of rubbish from or clean-up of the Worksite. All rubbish generated by HSE will be placed in designated areas appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 8.2 It is the intention of HSE and agreed by the Client that:
- (a) the Client shall:
 - (i) ensure that HSE has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections and for the delivery and installation of the Materials). HSE shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways, plants, shrubs and concreted or paved or grassed areas) unless due to the negligence of HSE; and
 - (ii) provide a clear room for installation. Breakages and damages are the responsibility of the Client. All care shall be taken by HSE and HSE accepts no responsibility in this regard; and
 - (iii) fully disclose any information in writing, prior to the scheduled installation, that may affect HSE's installation procedures.
 - (b) it is the Client's responsibility to provide HSE, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
 - (c) if the Works are interrupted by the failure of the Client to adhere to the work schedule agreed to between HSE and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 6.2.

9. Risk

- 9.1 If HSE retains ownership of the Materials under clause 15 then:
- (a) where HSE 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 HSE's address; or
 - (ii) the Materials are delivered by HSE or HSE's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where the Client is to supply Materials, said Materials have to be up to industry standard and HSE reserve the right to not use said Materials if, in HSE's judgement, they do not come up to relevant industry standard. If HSE have to acquire replacement Materials, HSE will pass those costs on to the Client.
- 9.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests HSE to leave Materials outside HSE'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.
- 9.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), HSE reasonably forms the opinion that the Client's premises are not safe for the installation of Materials to proceed then HSE shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.1) until HSE is satisfied that it is safe for the installation to proceed.

- 9.4 The Client acknowledges that HSE is only responsible for parts that are replaced by HSE; in the event that other parts/Materials subsequently fail, the Client agrees to indemnify HSE against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 9.5 HSE shall be entitled to rely on the accuracy of any plans, specifications 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, HSE accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.6 Where HSE gives any advice, recommendation, information, assistance or service provided by HSE in relation to Works supplied is given in good faith to the Client or the Client's agent and is based on HSE's own knowledge and experience and shall be accepted without liability on the part of HSE. Where such advice or recommendations is not acted upon then HSE shall require the Client or their agent to authorise commencement of the Works in writing. HSE shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 9.7 The Client acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in HSE's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.
- 9.8 Where the Client is a tenant (and therefore not the owner of the land and premises where the Materials are to be installed) then the Client warrants that full consent has been obtained from the owner for HSE to install the Materials on the owner's land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all Works provided under this Contract and to indemnify HSE against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Materials and the provision of any related Works by HSE except where such claim has arisen because of the negligence of HSE when installing the Materials.
- 9.9 The Client agrees that they shall upon request from HSE provide evidence that;
- (a) they are the owner of the land and premises upon which the Works are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Materials to be installed on the land and premises upon which the works are to be undertaken.
- 9.10 If HSE notifies the Client that it intends to store onsite Materials, plant, equipment or tools to be used in performance of the Works, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 6.2.
- 9.11 HSE accepts no responsibility for:
- (a) any damage or defects in any Materials caused by movement and/or interference of the said Materials; or
 - (b) painting, re-decorating, re-sealing, colouration variations, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out; or
 - (c) any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with HSE's and/or the manufacturers' recommendations.
- 9.12 The Client acknowledges that they shall:
- (a) not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party; and
 - (b) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable HSE to carry out the Works;
- 9.13 The Client acknowledges and accepts that HSE shall not accept any responsibility for any damage that may arise during the installation of light switches in the event that any third-party HSE employed by the Client has removed any or all reference to the positioning of light switches by either gipping or plastering the designated area. The Client accepts that installation of light switches will then be at the sole discretion of HSE. If the Client believes that they have any claim in relation to Works undertaken by that third party, then said claim must be made against the third party HSE in the first instance.
- 9.14 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by HSE, then HSE shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be the responsibility of the Client and will be shown as a variation on the invoice.
- 9.15 Any live services or services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". HSE's live services procedures are designed to eliminate risk of injury to HSE's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable.
- 9.16 If the Client has reason to claim that Materials supplied by HSE have been stolen, it shall be the Client's responsibility to notify the police and forward evidence to HSE, this shall not excuse the Client from fulfilling their financial obligations under this Contract.
- 9.17 In the event asbestos or any other toxic substances are discovered at the worksite, it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify HSE against any costs incurred by HSE because of such discovery. Under no circumstance will HSE handle removal of asbestos product.

10. Air Conditioning Risk

- 10.1 Whilst the final location of the internal/external unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to not be located in a location where localised drainage is available for condensate of the units.
- 10.2 The final location of the internal and / or external unit must be determined on the Worksite by the Client. In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 10.3 HSE shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however HSE cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc. Accordingly, HSE offers no warranty in regards to noise levels post installation unless it is evident that there is inherent fault in the Materials or that the installation process was defective.
- 10.4 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on Worksite, against theft or damage.
- 10.5 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify HSE immediately upon any proposed changes. The Client agrees to indemnify HSE against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 10.6 If during the provision of the Works, Contractor is required by the Client to undertake the installation of a condensation drain, this extra cost will be in addition to HSE's originally quoted price and must be fully borne by the Client.

11. Security Risk

- 11.1 The Client accepts that security systems, including but not limited to smoke, heat and intruder detectors installed to/at their premises:
- (a) are for monitoring and detection purposes and should not be seen as a life saving device; and
 - (b) do not guarantee the Worksite will be free from malicious damage or losses caused by attack, break and/or enter.
- 11.2 It shall be the Client's responsibility:
- (a) to ensure the security system equipment is tested and maintained to full operational condition; and
 - (b) for all phone calls emanating from the security system panel; and
 - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.

12. Solar Risk

- 12.1 The Client acknowledges that these terms and conditions are meant to be read in conjunction with the terms and conditions supplied by a utilities operator in relation to the installation of the solar system (where a solar system is supplied as part of, or in conjunction with, any Works provided under this Contract). Under those terms and conditions, the Client is required (to ensure the solar system remains safe

and functional) to regularly have the solar system inspected and maintained as specified in those terms and conditions. Whilst inspection and/or maintenance of the solar system is the Client's sole responsibility to arrange, HSE can provide such services at its usual rates if requested.

- 12.2 The electricity distributor/retailer may require the replacement of the Client's existing power meter, the cost of which shall be the Client's responsibility and is not included in any pricing specified under this Contract.
- 12.3 The Client acknowledges that the performance of the Materials may be affected by the actions of third parties and environmental conditions including, without limitation, the number of hours of sunlight, cloud cover, weather patterns, the location of the Materials and the location of surrounding structures and flora.
- 12.4 The Client acknowledges that some buildings may not have the optimum orientation for the installation of the Materials or components and therefore understands and accepts that the Materials performance may be compromised in such situations. Notwithstanding the former, HSE will use its best endeavours to install and position the Materials to maximise orientation and exposure to direct sunlight.

13. Underground Locations

- 13.1 Prior to HSE commencing any work the Client must advise HSE of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains & 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.
- 13.2 Whilst HSE will take all care to avoid damage to any underground services the Client agrees to indemnify HSE 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 13.1.

14. Compliance with Laws

- 14.1 The Client and HSE 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.
- 14.2 Both parties acknowledge and agree to comply with the Building Amendment Act 2013, in respect of all building products to be supplied during the course of the Works.
- 14.3 Where the Client has supplied products for HSE to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and are for their Intended Use and any faults inherent in those products. However, if in HSE's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then HSE 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 invoiced in accordance with clause 6.2.
- 14.4 The Client and HSE 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 Safe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 14.5 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 14.6 HSE shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works.
- 14.7 Notwithstanding clause 14.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") HSE agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-Contractor for the Client who has engaged a third party head contractor.

15. Title

- 15.1 HSE and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid HSE all amounts owing to HSE; and
 - (b) the Client has met all of its other obligations to HSE.
- 15.2 Receipt by HSE 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 HSE on request; and
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for HSE and must pay to HSE the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed; and
 - (c) the production of these terms and conditions by HSE shall be sufficient evidence of HSE's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with HSE to make further enquiries; and
 - (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 HSE and must pay or deliver the proceeds to HSE on demand; and
 - (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 HSE and must sell, dispose of or return the resulting product to HSE as it so directs; and
 - (f) unless the Materials have become fixtures the Client irrevocably authorises HSE to enter any premises where HSE believes the Materials are kept and recover possession of the Materials; and
 - (g) HSE may recover possession of any Materials in transit whether or not delivery has occurred; and
 - (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 HSE; and
 - (i) HSE 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 HSE for Works – that have previously been supplied and that will be supplied in the future by HSE 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 HSE may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
 - (b) indemnify, and upon demand reimburse, HSE 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; and
 - (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 HSE; and
 - (d) immediately advise HSE 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 HSE 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, and 131 of the PPSA.

- 16.5 Unless otherwise agreed to in writing by HSE, 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 HSE under clauses 16.1 to 16.5.
- 16.7 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of HSE 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 HSE from and against all HSE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HSE's rights under this clause.
- 17.3 The Client irrevocably appoints HSE and each director of HSE 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 (or the Works on completion) and shall within seven (7) days of delivery (time being of the essence) notify HSE of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford HSE 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 HSE has agreed in writing that the Client is entitled to reject, HSE's liability is limited to either (at HSE'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, unless at HSE's discretion, with the items contained within inventory stock, and returned with all original packaging intact.
- 18.3 HSE may (at its discretion) accept the return of Goods for credit, but this may incur a restocking fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 18.4 Subject to clause 18.1, non stock-list items or Goods made to the Client's specifications are not acceptable for credit or return.

19. Warranties

- 19.1 Subject to the conditions of warranty set out in clause 19.2 HSE warrants that if any defect in any workmanship of HSE becomes apparent and is reported to HSE within twelve (12) months (for electrical work) of the date of delivery (being the date of HSE's issuance of code of compliance or electrical safety certificate), then HSE will either (at HSE's sole discretion) replace or remedy the workmanship. For underfloor heating work, only relating to the heating element work undertaken by HSE, this period is a ten (10) year period.
- 19.2 The conditions applicable to the warranty given by clause 19.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Materials; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by HSE or the Manufacturer, specifically that RCD and Surge Protection are fitted to the heating element; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God (see clause 29.9); or
 - (vi) failure of the cable at a point other than the location of the repairs undertaken by HSE; or
 - (vii) failure of the control system unless HSE have previously undertaken work on the control system.
- (b) the warranty shall cease and HSE shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without HSE's consent; or
- (c) in respect of all claims HSE 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.
- 19.3 The warranty shall be the current warranty provided by the manufacturer of the Materials. HSE 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.
- 19.4 HSE shall ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, the Client issues written instruction insisting on installation that goes against HSE's recommendations or falls below industry standards, in this scenario, HSE shall offer no warranty.
- 19.5 Whereby, where HSE is required to reinstall or reapply the Materials under the Manufacturers warranty, HSE is entitled to charge a cost of labour to undertake this work to the Client or HSE's supplier, whichever is applicable to bear the cost

20. Consumer Guarantees Act 1993

- 20.1 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 HSE to the Client.

21. Intellectual Property

- 21.1 Where HSE has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in HSE, and shall only be used by the Client at HSE's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of HSE.
- 21.2 The Client warrants that all designs, specifications or instructions given to HSE will not cause HSE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify HSE against any action taken by a third party against HSE in respect of any such infringement.
- 21.3 The Client agrees that HSE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which HSE has created for 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 HSE'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 HSE any money the Client shall indemnify HSE from and against all costs and disbursements incurred by HSE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HSE's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies HSE may have under this Contract, if a Client has made payment to HSE, 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 HSE 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 HSE's other remedies at law HSE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HSE shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HSE becomes overdue, or in HSE's opinion the Client will be unable to make a payment when it falls due; or
 - (b) the Client has exceeded any applicable credit limit provided by HSE; or
 - (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 rights or remedies HSE 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 HSE may suspend or terminate the supply of the Works. HSE will not be liable to the Client for any loss or damage the Client suffers because HSE has exercised its rights under this clause.
- 23.2 HSE 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 HSE shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to HSE for Works already performed. HSE 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 HSE 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 Policy

- 24.1 All emails, documents, images or other recorded information held or used by HSE is Personal Information as defined and referred to in clause 24.4 and therefore considered confidential. HSE acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). HSE acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by HSE that may result in serious harm to the Client, HSE will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to HSE in respect of Cookies where the Client utilises HSE's website to make enquiries. HSE 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; and
 - (b) tracking website usage and traffic; and
 - (c) reports are available to HSE when HSE sends an email to the Client, so HSE may collect and review that information ("collectively Personal Information").
- 24.3 If the Client consents to HSE's use of Cookies on HSE's website and later wish to withdraw that consent, the Client may manage and control HSE's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when existing the site.
- 24.4 The Client authorises HSE or HSE'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 (e.g. 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; and
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by HSE from the Client directly or obtained by HSE 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.
- 24.5 Where the Client is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.6 The Client shall have the right to request HSE for a copy of the Personal Information about the Client retained by HSE and the right to request HSE to correct any incorrect Personal Information about the Client held by HSE.

25. Suspension of Works

- 25.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) HSE 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 HSE by a particular date; and
 - (iv) HSE has given written notice to the Client of its intention to suspend the carrying out of construction work under the Construction Contract.
 - (b) if HSE 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 HSE exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to HSE 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 HSE suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes HSE from continuing the Works or performing or complying with HSE's obligations under this Contract, then without prejudice to HSE's other rights and remedies, HSE 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 HSE as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 25.2 If pursuant to any right conferred by this Contract, HSE suspends the Works and the default that led to that suspension continues un-remedied subject to clause 23.1 for at least ten (10) working days, HSE shall be entitled to terminate the Contract, in accordance with clause 23.

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; or
 - (b) by leaving it at the address of the other party as stated in this Contract; or
 - (c) by sending it by registered post to the address of the other party as stated in this Contract; or
 - (d) 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 HSE may have notice of the Trust, the Client covenants with HSE 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; and
 - (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; and
 - (c) the Client will not without consent in writing of HSE (HSE 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; or
 - (ii) any alteration to or variation of the terms of the Trust; or
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

28. Insurance

- 28.1 HSE shall have public liability insurance of at least five (5) million dollars. It is the Client's responsibility to ensure that they are similarly insured.
- 28.2 In the event of any breach of this contract by HSE, the remedies of the Client shall be limited to damages. Under no circumstance shall the liability of HSE exceed the cost of services supplied.

29. General

- 29.1 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).
- 29.2 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.
- 29.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Christchurch, New Zealand.
- 29.4 HSE 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 HSE of these terms and conditions (alternatively HSE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 29.5 HSE may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 29.6 The Client cannot licence or assign without the written approval of HSE.
- 29.7 HSE 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 HSE's sub-Contractor's without the authority of HSE.
- 29.8 The Client agrees that HSE 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 HSE to provide Works to the Client.
- 29.9 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 (referenced as Force Majeure).
- 29.10 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.