



- (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:
- 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
  - 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
  - not register, 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
  - 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 attorneys 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) or 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:
- the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - failure on the part of the Client to properly maintain any Materials; or
    - 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
    - any use of any Materials otherwise than for any application specified on a quote or order form; or
    - the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - fair wear and tear, any accident or act of God (see clause 29.9); or
    - failure of the cable at a point other than the location of the repairs undertaken by HSE; or
    - failure of the control system unless HSE have previously undertaken work on the control system.
  - 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
  - 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:
- 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
  - the Client has exceeded any applicable credit limit provided by HSE; or
  - 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
  - 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 its obligation to pay) and/or if any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notices) 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:
- IP address, browser, email client type and other similar details; and
  - tracking website usage and traffic; and
  - 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 exiting the site.
- 24.4 The Client authorises HSE or HSE's agent to:
- access, collect, retain and use any information about the Client:
    - (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
    - for the purpose of marketing products and services to the Client.
  - 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:
- 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:
    - 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
    - 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
    - the Client has not complied with an adjudicator's notice that the Client must pay an amount to HSE by a particular date; and
    - HSE has given written notice to the Client of its intention to suspend the carrying out of construction work under the Construction Contract.
  - if HSE suspends work, it:
    - is not in breach of Contract; and
    - 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
    - is entitled to an extension of time to complete the Contract; and
    - 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 come with.
  - if HSE exercises the right to suspend work, the exercise of that right does not:
    - affect any rights that would otherwise have been available to HSE under the Contract and Commercial Law Act 2017; or
    - 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;
  - 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 commencement 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 unremedied 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:
- by handing the notice to the other party, in person; or
  - by leaving it at the address of the other party as stated in this Contract; or
  - by sending it by registered post to the address of the other party as stated in this Contract; or
  - 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:
- the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund; and
  - 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
  - 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:
    - the removal, replacement or retirement of the Client as trustee of the Trust; or
    - any alteration to or variation of the terms of the Trust; or
    - any advancement or distribution of capital of the Trust; or
    - 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 license 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.