
Bayphil Construction Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contractor” shall mean Bayphil Construction Limited, its successors and assigns or any person acting on behalf of and with the authority of Bayphil Construction Limited.
- 1.2 “Client” shall mean the Client or any person acting on behalf of and with the written authority of the Client.
- 1.3 “Works” shall mean all Works (including the supply of Materials) undertaken by the Contractor and described in this contract and includes any advice or recommendations.
- 1.4 “Materials” shall mean Materials required to complete the Works.
- 1.5 “Prime Cost Item” shall mean an item that either has not been selected, or whose Price is not known, at the time this contract is entered into and for the cost of supply and delivery of which the Contractor must make a reasonable allowance in the contract.
- 1.6 “Provisional Sum” shall mean an estimate of the cost of carrying out particular Works under this contract for which the Contractor, after making all reasonable inquiries, cannot give a definite Price at the time this contract is entered into.
- 1.7 “Price” shall mean the Price of the Works as agreed between the Contractor and the Client.

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 provision of any Works.
- 2.2 These terms and conditions may only be amended with the Contractor’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Contractor as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the Works on the Client’s behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor’s profit margin) in providing any Works, Materials, Works or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give the Contractor 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, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client’s failure to comply with this clause.

5. Variations

- 5.1 The Contractor reserves the right to change the Price:
- (a) if a variation to the Works originally scheduled (including any Materials, applicable plans or specifications) is requested; or
 - (b) 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, obscured building defects, incorrect measurements provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality, hard rock barriers below the surface or iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (c) in the event of increases to the Contractor in the cost of labour or Materials, which are beyond the Contractor’s control.
- 5.2 In the event that the Client requests a variation all such requests shall be made in writing. If the Contractor believes the variation will not require a variation to any permit and will not cause any delay, and will not add more than two percent (2%) to the Price then the Contractor may carry out the variation and the Client agrees to pay any variation to the Price, otherwise the Contractor will give the Client a written variation document detailing the Works, the amended Price, the estimated time to undertake the variation, and the likely delay, if any, and require written acceptance by the Client of the variation before commencing Work on the variation.
- 5.3 In the event that the Contractor requests a variation, the Contractor will, in writing:
- (a) state the reason for the variation; and
 - (b) provide a full description of the variation; and
 - (c) state any effect the variation will have on the contract, including but not limited to, the Price, completion date and whether further permits or authorisations are required.

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- 5.4 Other than for the events outlined in clause 5.5 the Contractor shall obtain written acceptance by the Client of any variation submitted by the Contractor before commencing Work on the variation.
- 5.5 Where the Works involve additions or alterations to an existing building or structure then:
- (a) the Contractor shall not be liable for any loss or damage suffered by the Client in relation to the Works where such loss or damage results from the state or condition of the Client's existing building or structure, and the effect of such state or condition on the Works, or the effect of the Works on the existing building or structure, could not reasonably have been foreseen by the Contractor during the course of the Works; and
 - (b) where as a result of opening up any part of the existing building or structure to carry out the Works, any additional or altered work is required because of non-standard construction or any substandard timber or other materials or because of any material which is required to be replaced or removed to carry out the Works, then the cost of any additional or altered work shall be borne by the Client and treated as a variation and the Price adjusted accordingly.

6. Price and Payment

- 6.1 At the Contractor's sole discretion the Price shall be either:
- (a) as indicated in the Contractor's Formal Building Contract or invoices provided by the Contractor to the Client in respect of Works provided; or
 - (b) the Contractor's quoted Price (subject to clause 5) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 6.2 At the Contractor's sole discretion, a non-refundable deposit shall be required on request.
- 6.3 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on completion of the Works;
 - (b) before completion of the Works;
 - (c) by way of progress payments in accordance with the Contractor'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;
 - (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 fourteen (14) days following the date of any invoice given to the Client by the Contractor.
- 6.4 Payment may be made by bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.
- 6.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any provision of Works by the Contractor under this or any other agreement. 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.
- 6.6 Receipt by the Contractor 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, and until then the Contractor's ownership or rights in respect of Works, and this agreement, shall continue.

7. Completion of the Works

- 7.1 Subject to clause 7.2, it is the Contractor'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 contract period extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for installation; or
 - (c) notify the Contractor that the site is ready.
- 7.3 The Works shall be deemed to be completed when:
- (a) the Works carried out under this contract have been completed in accordance with the plans and specifications set out in this contract; and
 - (b) the Client either:
 - (i) receives a certificate of acceptance where the Works were urgent and completed without a consent; or
 - (ii) in any other case, upon the issuance of a Notice of Practical Completion (where applicable).
- 7.4 The Client shall inspect the Works upon completion and shall within one (1) month notify the Contractor of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Works within a reasonable time following such notification if the Client believes the Works are defective in any way. If the Client shall fail to comply with these provisions the Works shall be presumed to be free from any defect or damage.

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- 7.5 For defective Works, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) rectifying or re-providing the Works.
- 7.6 Any time specified by the Contractor for provision of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that the Contractor is unable to provide the Works as agreed solely due to any action or inaction of the Client then the Contractor shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.

8. Site Access and Condition

- 8.1 It is the intention of the Contractor and agreed by the Client that:
- (a) the Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor; and
 - (b) it is the Client's responsibility to provide the Contractor, while at the site, with adequate access to available water, electricity, toilet and washing facilities; and
 - (c) the Client is entitled to have reasonable access to inspect the Works at all reasonable hours in the presence of the Contractor provided that the Contractor shall not be responsible for any damage done to the Works by the Client, and the Client does not interfere with the process of the Works, and the Client complies with all requirements of Health and Safety in Employment Act 1992; and
 - (d) unless otherwise stated on the quotation/estimate, it is the responsibility of the Client or the Client's agent to remove rubbish from, or clean up, the building/construction site/s, and bear the cost of any rubbish removal/dump fees.

9. Compliance and Consents

- 9.1 The Client shall be responsible for obtaining and paying for any necessary consents, approvals or certificates required for the Works, including those required subsequent to commencement of the Works.
- 9.2 The Contractor shall comply with the terms and conditions of the consents and resource consents and approvals, as far as such consents and approvals relate to the carrying out of the Works.
- 9.3 Where applicable:
- (a) the Client shall be responsible for applying for and obtaining the Code Compliance Certificate(s) for the Works (if applicable).
 - (b) the Contractor shall provide the Client with all necessary information relating to the Works so that the Client may apply for a Code Compliance Certificate.

10. Works undertaken by Client

- 10.1 In the event that any part of the Works is undertaken by, or is reliant upon Works undertaken by (or on behalf of) the Client then any Works undertaken thereby shall be at the written permission of the Contractor and executed in accordance with a timetable provided to the Client by the Contractor and shall be undertaken strictly in accordance with the plans and specifications, the Building Act 2004 (in particular sections 14B(b) and (c)) and any relevant regulations made under that Act, and any direction given by the Contractor.
- 10.2 In the event of the Client failing to undertake any such Works strictly in accordance with clause 10.1, the Contractor shall be entitled to:
- (a) rectify any such failure to make good a defect; and
 - (b) charge the Client any extra costs incurred due to additional labour or material costs with any such costs being paid to the Contractor as invoiced prior to possession being given and taken.
- 10.3 The Contractor shall not be liable for any loss or damage howsoever caused as a result of any Works performed by the Client.
- 10.4 In the event of any loss arising out of any Materials supplied by the Client, the Client shall be liable for all such loss or damage.
- 10.5 During any period that the Client is working on the Works the Client shall take all practical steps to prevent harm to the Contractor and shall comply with the provisions of the Health and Safety in Employment Act 1992.

11. Risk

- 11.1 If the Contractor retains ownership of the Materials nonetheless, all risk for the Materials passes to the Client on completion.
- 11.2 The Contractor shall be responsible for the Works from the date that the Contractor takes possession of the building site until the date of Practical Completion recorded in the Notice of Practical Completion.
- 11.3 The Contractor may at its discretion notify the Client that it requires to store at the work site Materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 11.4 The Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and Works incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

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- 11.5 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Works provided is given in good faith, is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor 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.
- 11.6 The Contractor will use reasonable endeavours to match new Materials to existing items. However, the parties recognise that it may not be possible to provide an exact matching thereof and in such event there shall be no claim against the Contractor.
- 12. Dimensions, Plans and Specifications**
- 12.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Works, unless the Contractor and the Client agree otherwise in writing.
- 12.2 The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client, or the Client's representative.
- 13. Underground Locations**
- 13.1 Prior to the Contractor commencing the Works the Client must advise the Contractor 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.
- 13.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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. Insurance**
- 14.1 The Contractor shall maintain a public liability insurance policy indemnifying the Contractor against claims in respect of loss or damage against any property or injury or death or illness to any person arising out of the operations of the Contractor or any of its subcontractors in connection with the execution of the Works. The policy shall be in the joint names of the Contractor and the Client and shall be for an amount of not less than one million dollars (\$1,000,000) and shall be kept continuously in force until any Works required to remedy defects has been completed.
- 14.2 Where the Works involve physical change to an existing structure including additions or alterations Works then the Client shall arrange insurance:
- (a) for the Works against loss or damage for not less than the total of the Price; and
 - (b) for full replacement value against loss or damage to the Client's existing structure made available to enable performance of the Works or adjacent to the Works and against loss or damage to the Client's contents; and
 - (c) against consequential loss arising from loss or damage to the Client's existing structures made available for the Works to be carried out
- 14.3 In the case of additions or alterations Works, insurance cover under clause 14.2 may be provided under the Client's existing policy of insurance in relation to the existing building or structure as an extension of such policy and:
- (a) shall be in the joint names of the Client, the Contractor and the mortgagee (if any); and
 - (b) shall not be able to be cancelled or materially changed without giving at least ten (10) working days prior notification by the insurer in writing to the Contractor and the Client; and
 - (c) shall include a waiver of the insurer's right to subrogation against the insurer parties.
- 14.4 For new dwellings the Contractor shall from the date that the Works are due to be commenced until the date that the Works are completed keep the Works insured against loss or damage. The insurance policy shall be in the names of the Client, the Contractor and the mortgagee (if any). Such cover shall also be maintained after completion if any defects require rectification by the Contractor and until such time as those Works have been completed.
- 15. Surplus Materials**
- 15.1 Unless otherwise stated elsewhere in this contract:
- (a) only suitable new Materials will be used; and
 - (b) demolished Materials remain the Client's property, and it is the responsibility of the Client to dispose of such as per clause 8.1(d); and
 - (c) Materials that the Contractor brings to the site which are surplus remain the property of the Contractor.
- 16. Title**
- 16.1 It is the intention of the Contractor and agreed by the Client that ownership of Materials shall not pass until:
- (a) the Client has paid all amounts owing for the particular Materials; and
 - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.

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- 16.2 It is further agreed that:
- (a) where practicable the Materials shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Materials shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Materials or any of them to the Contractor. Upon such notice the rights of the Client to obtain ownership or any other interest in the Materials shall cease; and
 - (c) the Contractor shall have the right of stopping the Materials in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Materials to the Contractor then the Contractor or the Contractor's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Materials are situated and take possession of the Materials.

17. Warranty

- 17.1 Subject to the conditions of warranty set out in clause 17.2, the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within one (1) year of the date of completion (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by clause 17.1 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 the Works; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of the Works otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of the Works 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.
 - (b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
 - (c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 17.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

18. Intellectual Property

- 18.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any Materials for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 18.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials which the Contractor has created for, or any digital media of the Works which the Contractor has provided to, the Client.

19. Construction Contracts Act 2002

- 19.1 In the event that the Client is a residential occupier as defined by the Construction Contracts Act 2002 the Client hereby expressly acknowledges that:
- (a) the Contractor has the right to suspend the Works 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 the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Contractor suspends the Works 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

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- (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 the Contractor exercises the right to suspend the Works, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Contractor under the Contractual Remedies Act 1979; 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 the Contractor suspending the Works under this provision.

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twenty percent (20%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 20.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Contractor may suspend or terminate the provision of Works to the Client under the Construction Contracts Act 2002. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor exercised its rights under this clause.
- 20.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20.5 Any accusation by the Client against the Contractor of wilful damage or theft (as a reason for non-payment of the Contractor's invoice), shall not be considered unless it becomes a Police matter.

21. Security and Charge

- 21.1 In consideration of the Contractor agreeing to provide 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).
- 21.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 21.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 21 including, but not limited to, signing any document on the Client's behalf.

22. Client's Disclaimer

- 22.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Contractor and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

23. Cancellation

- 23.1 Subject to clauses 23.2 to 23.4, the Client may cancel this contract if;
- (a) either:
 - (i) the Price rises by fifteen (15) percent or more after the contract was entered into; or
 - (ii) the contract has not been completed within 1½ times the period it was to have been completed by; and
 - (b) the reason for the increased time or cost was something that could not have been reasonably foreseen by the Contractor on the date the contract was made.
- 23.2 For the purposes of clause 23.1, any increased time or cost that arises as a result of a Prime Cost Item or a Provisional Sum or that is caused by a variation is to be ignored in calculating any Price rise or increase in time.
- 23.3 To end the contract, the Client must give the Contractor a signed notice stating that the Client is ending the contract under this clause and giving the details of why the contract is being ended.
- 23.4 If a contract is ended under this clause, the Contractor is entitled to a reasonable Price for the Works carried out under the contract to the date the contract is ended. However, the Contractor may not recover more than the Contractor would have been entitled to recover under the contract.

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23.5 Cancellation of orders for Materials 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 the Contractor or the Contractor'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 the Contractor from the Client directly or obtained by the Contractor 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 the Contractor for a copy of the information about the Client retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Client held by the Contractor.

25. Personal Property Securities Act 1999 ("PPSA")

25.1 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 collateral (account) – being a monetary obligation of the Client to the Contractor for Works – previously provided (if any) and that will be provided in the future by the Contractor to the Client.

25.2 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 the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register a financing or a change demand without the prior written consent of the Contractor.

25.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

25.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

25.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

25.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 25.1 to 25.5.

26. Consumer Guarantees Act 1993

26.1 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 the Contractor to the Client.

27. General

27.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor'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.

27.2 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 New Zealand.

27.3 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price).

27.4 The Contractor shall only accept liability for liquidated damages if such damages result directly from the negligence of the Contractor.

27.5 The Client hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Contractor and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

27.6 If the Client is acquiring Works 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 provision of Works by the Contractor to the Client.

27.7 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 the Contractor nor to withhold payment of any invoice because part of that invoice, or any other matter relating to the Works, is in dispute.

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- 27.8 In the event of a dispute, the Client must submit such to the Contractor or any relevant authority (e.g. Police, Building Practitioners Board, etc.).
- 27.9 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 27.10 The Client agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide any Works to the Client.
- 27.11 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.
- 27.12 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 27.13 This contract, the plans and specifications have precedence in that order if there is any inconsistency between them.

**Your emailed acceptance of your quotation also acknowledges your acceptance of these
BayPhil Construction Ltd Terms and Conditions of Trade**

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