

**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 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using PPEL’s website, then the Customer 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.**
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting PPEL to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and  
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and  
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and  
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.5 **“Non-Conforming Building Product”** means any associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Works:  
(a) the product is not, or will not be, safe; or  
(b) does not, or will not, comply with the relevant regulatory provisions; or  
(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.6 **“PPEL”** means Paul Pearce Electrical Limited, its successors and assigns.
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between PPEL and the Customer in accordance with clause 6 below.
- 1.8 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by PPEL to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.9 **“Worksite”** means the address nominated by the Customer to which the Materials are to be supplied by PPEL.

**2. Acceptance**

- 2.1 The parties acknowledge and agree that:  
(a) they have read and understood the terms and conditions contained in this Contract; and  
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer 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 Customer acknowledges and accepts that the supply of:  
(a) Works on credit shall not take effect until the Customer has completed a credit application with PPEL and it has been approved with a credit limit established for the account. In the event that the supply of Works requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, PPEL reserves the right to refuse delivery; and  
(b) Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, PPEL reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases PPEL will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer’s order and/or Works on hold, as per clause 7.2 until such time as PPEL and the Customer agree to such changes.
- 2.5 Where the Customer is a tenant (and therefore not the owner of the land and premises where Works are to be carried out) then the Customer warrants that they have obtained the full consent of the owner for PPEL to carry out the Works on the owner’s land and premises. The Customer acknowledges and agrees that they shall be personally liable for full payment of the Price for the Works provided under this Contract and to indemnify PPEL against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by PPEL, except where such claim has arisen because of the negligence of PPEL when undertaking the Works. Furthermore, the Customer agrees that they shall, upon request from PPEL, 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 Works to be carried out on the land and premises.
- 2.6 In the event that the Customer requests PPEL to:  
(a) make an emergency Call-Out for critical equipment after hours or causes PPEL to cancel or reschedule other work then PPEL reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between PPEL and the Customer; and  
(b) provide the Works urgently, that may require PPEL’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then PPEL reserves the right to charge the Customer additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between PPEL and the Customer.
- 2.7 If PPEL has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Authorised Representatives**

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

**4. Errors and Omissions**

4.1 The Customer acknowledges and accepts that PPEL 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 PPEL 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 PPEL in respect of the Works.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of PPEL; the Customer:

- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
- (b) shall not be responsible for any additional costs incurred by PPEL arising from the error or omission.

**5. Change in Control**

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

**6. Price and Payment**

6.1 At PPEL's sole discretion, the Price shall be either:

- (a) as indicated on invoices provided by PPEL to the Customer in respect of Works performed or Materials supplied; or
- (b) PPEL's quoted Price (subject to clause 6.2) which shall be binding upon PPEL provided that the Customer shall accept PPEL's quotation in writing within thirty (30) days.

6.2 PPEL reserves the right to change the Price:

- (a) if a variation to the Materials which are to be supplied is requested; or
- (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to the Worksite access and/or crawl spaces, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Customer, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock or other barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring, etc) which are only discovered on commencement of the Works; or
- (d) in the event of increases to PPEL in the cost of labour or Materials which are beyond PPEL's control.

6.3 Variations will be charged for on the basis of PPEL's quotation, and will be detailed in writing, and shown as variations on PPEL's invoice. The Customer shall be required to respond to any variation submitted by PPEL within ten (10) working days. Failure to do so will entitle PPEL 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 PPEL's sole discretion, a reasonable deposit may be required.

6.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by PPEL, which may be:

- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with PPEL'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
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by PPEL.

6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A of the Construction Contracts Act 2002 and as such no Retention Money shall be used other than to remedy defects in the performance of PPEL's obligations under the Contract.

6.7 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Customer and PPEL.

6.8 PPEL may in its discretion allocate any payment received from the Customer towards any invoice that PPEL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer PPEL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by PPEL, payment will be deemed to be allocated in such manner as preserves the maximum value of PPEL's Purchase Money Security Interest (as defined in the PPSA) in the Materials.

6.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by PPEL nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by PPEL is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Customer from the ability to dispute any invoice.

6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to PPEL an amount equal to any GST PPEL must pay for any supply by PPEL under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**7. Provision of the Works**

- 7.1 Subject to clause 7.2 it is PPEL'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 PPEL claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond PPEL's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the Worksite ready for the Works; or
  - (c) notify PPEL that the Worksite is ready.
- 7.3 PPEL 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.
- 7.4 Any time specified by PPEL for delivery of the Works is an estimate only and PPEL will not be liable for any loss or damage incurred by the Customer 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 PPEL is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then PPEL shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

**8. Risk**

- 8.1 If PPEL retains ownership of the Materials under clause 10 then:
- (a) where PPEL is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. The cost of delivery is either included in the Price or is in addition to the Price as agreed between the parties. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at PPEL's address; or
    - (ii) the Materials are delivered by PPEL or PPEL's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
  - (b) unless otherwise agreed, where PPEL is to both to supply and install the Materials then PPEL shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests PPEL to leave Materials outside PPEL'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 Customer and it shall be the Customer'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 Customer's expense.
- 8.3 Any advice, recommendation, information, assistance, or service provided by PPEL in relation to Materials or Works supplied is given in good faith to the Customer, or the Customer's agent and is based on PPEL's own knowledge and experience and shall be accepted without liability on the part of PPEL. Where such advice or recommendations are not acted upon then PPEL shall require the Customer or their agent to authorise commencement of the Works in writing. PPEL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 8.4 PPEL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, PPEL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.5 The Customer 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, but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) PPEL reasonably forms the opinion that the Customer's property is not safe for the installation of Materials to proceed then PPEL shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until PPEL is satisfied that it is safe for the installation to proceed. PPEL may in agreement with the Customer bring the property up to a standard suitable for installation to proceed but all such Works undertaken, and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify PPEL immediately upon any proposed changes. The Customer agrees to indemnify PPEL against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 8.7 The Customer acknowledges and accepts that:
- (a) where PPEL has performed temporary repairs that PPEL:
    - (i) offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
    - (ii) will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
  - (b) PPEL is only responsible for components that are replaced by PPEL and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
  - (c) PPEL shall not be responsible or liable for any:
    - (i) defect in other appliances or power points as a coincidence of PPEL installing the Materials;
    - (ii) damage that may arise during the installation of light switches in the event that any third-party contractor employed by the Customer has removed any or all reference to the positioning of light switches by either gipping or plastering the designated area. The Customer accepts that installation of light switches will then be at the sole discretion of PPEL. If the Customer 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 contractor in the first instance;
    - (iii) defects in the Materials or appearing in the Works after completion due to the Customer or any third party using any items that overloads the structure or system to which PPEL's Materials are installed or connected to, or by workmanship not performed by PPEL, shall not be covered by any applicable warranty pertaining to the Materials; and

- (iv) loss or damage caused in accessing the work area beyond reasonable control of PPEL (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which PPEL may have to break into or disturb in performance of the Works), unless due to the negligence of PPEL.
  - (d) it is the Customer's responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage;
  - (e) under no circumstances, will PPEL handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
    - (i) PPEL shall suspend the Works;
    - (ii) the Customer shall be fully responsible for the resolution of any resulting problems; and
    - (iii) any additional cost incurred by PPEL shall be added to the Price under clause 6.2.
  - (f) Materials supplied may:
    - (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. PPEL will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
    - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
    - (iii) mark or stain if exposed to certain substances; and
    - (iv) be damaged or disfigured by impact or scratching.
- 8.8 PPEL accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with PPEL's and/or the manufacturers' recommendations.

### **9. Worksite Access and Condition**

- 9.1 PPEL is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by PPEL will be placed in a designated area appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
- 9.2 The Customer shall ensure that PPEL has clear and free access to the Worksite at all times to enable them to undertake the Works. PPEL shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of PPEL.
- 9.3 It is the Customer's responsibility to provide PPEL, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities as required.
- 9.4 Where PPEL requires that Materials, tools etc. required for the Works be stored at the Worksite, the Customer shall supply PPEL a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 9.5 *Worksite Inductions*
- (a) in the event the Customer requires an employee or sub-contractor of PPEL to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay PPEL's standard (and/or overtime, if applicable) hourly labour rate; or
  - (b) where PPEL is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out PPEL's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by PPEL.

### **10. Underground Locations**

- 10.1 Prior to PPEL commencing any work the Customer must advise PPEL of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Customer 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.
- 10.2 Whilst PPEL will take all care to avoid damage to any underground services the Customer agrees to indemnify PPEL 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 10.1.

### **11. Compliance with Laws**

- 11.1 The Customer and PPEL 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.
- 11.2 Both parties acknowledge and agree:
  - (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Works; and
  - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.3 Where the Customer has supplied products for PPEL to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in PPEL's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then PPEL 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.
- 11.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 11.5 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 installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.

- 11.6 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 PPEL, then PPEL shall notify the Customer 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 Customer accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Customer's account.
- 11.7 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Statutory Acts and Work Place Regulations". PPEL's live Works procedures are designed to eliminate risk of injury to PPEL's employees, damage to the Customer'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. This shall be invoiced in accordance with clause 6.2.
- 11.8 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), PPEL agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.

**12. Title**

- 12.1 PPEL and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid PPEL all amounts owing to PPEL; and
  - (b) the Customer has met all of its other obligations to PPEL.
- 12.2 Receipt by PPEL 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to PPEL on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for PPEL and must pay to PPEL the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
  - (c) the production of these terms and conditions by PPEL shall be sufficient evidence of PPEL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with PPEL to make further enquiries;
  - (d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for PPEL and must pay or deliver the proceeds to PPEL on demand;
  - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of PPEL and must sell, dispose of or return the resulting product to PPEL as it so directs;
  - (f) unless the Materials have become fixtures the Customer irrevocably authorises PPEL to enter any premises where PPEL believes the Materials are kept and recover possession of the Materials;
  - (g) PPEL may recover possession of any Materials in transit whether or not delivery has occurred;
  - (h) the Customer 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 PPEL; and
  - (i) PPEL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

**13. Personal Property Securities Act 1999 ("PPSA")**

- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by PPEL to the Customer and the proceeds from such Materials as listed by PPEL to the Customer in invoices rendered from time to time.
- 13.2 The Customer 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 PPEL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, PPEL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of PPEL; and
  - (d) immediately advise PPEL 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.
- 13.3 Unless otherwise agreed to in writing by PPEL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.4 The Customer shall unconditionally ratify any actions taken by PPEL under clauses 13.1 to 13.3.
- 13.5 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**14. Security and Charge**

- 14.1 In consideration of PPEL agreeing to supply the Works, the Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and

conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

- 14.2 The Customer indemnifies PPEL from and against all PPEL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PPEL's rights under this clause.
- 14.3 The Customer irrevocably appoints PPEL and each director of PPEL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

**15. Defects and Returns**

- 15.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify PPEL of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Customer shall afford PPEL an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which PPEL has agreed in writing that the Customer is entitled to reject, PPEL's liability is limited to either (at PPEL's discretion) replacing the Materials or repairing the Materials.
- 15.2 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
  - (b) PPEL has agreed in writing to accept the return of the Materials; and
  - (c) the Materials are returned at the Customer's cost within ten (10) days of the delivery date; and
  - (d) PPEL will not be liable for Materials which have not been stored or used in a proper manner; and
  - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures, and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.3 If PPEL accepts that the Customer is entitled to reject the Materials following their return pursuant to clause 15.2(b) PPEL will reimburse the Customer's actual and reasonable costs of return delivery.
- 15.4 PPEL will not accept the return of Materials for credit.
- 15.5 Subject to clause 15.1, non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.

**16. Warranties**

- 16.1 Subject to the conditions of warranty set out in clause 16.2 PPEL warrants that if any workmanship provided by PPEL becomes apparent and is reported to PPEL within twelve (12) months of the date of delivery (time being of the essence) then PPEL will either (at PPEL's sole discretion) replace or remedy the defect.
- 16.2 The conditions applicable to the warranty given by clause 16.1 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 Customer to properly maintain any Materials or serviced item; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by PPEL; or
    - (iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Materials or serviced item 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 PPEL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without PPEL's consent.
  - (c) in respect of all claims PPEL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 16.3 For Materials not manufactured by PPEL, the warranty shall be the current warranty provided by the manufacturer of the Materials. PPEL 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.

**17. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**

- 17.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Materials by PPEL to the Customer.
- 17.2 PPEL agrees to abide by the provisions of the Fair Trading Act ("FTA").

**18. Intellectual Property**

- 18.1 Where PPEL has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules, and products shall remain vested in PPEL, and shall only be used by the Customer at PPEL's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of PPEL.
- 18.2 The Customer warrants that all designs, specifications, or instructions given to PPEL will not cause PPEL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify PPEL against any action taken by a third party against PPEL in respect of any such infringement.
- 18.3 The Customer agrees that PPEL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which PPEL has created for the Customer.

**19. Default and Consequences of Default**

- 19.1 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 PPEL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes PPEL any money the Customer shall indemnify PPEL from and against all costs and disbursements incurred by PPEL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PPEL's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies PPEL may have under this Contract, if a Customer has made payment to PPEL, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by PPEL under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to PPEL's other remedies at law PPEL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PPEL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to PPEL becomes overdue, or in PPEL's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by PPEL;
  - (c) the Customer 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 Customer or any asset of the Customer.

**20. Cancellation**

- 20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Materials or Works to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 20.2 If PPEL, due to reasons beyond PPEL's reasonable control, is unable to deliver any Materials or Works to the Customer, PPEL may cancel any contract to which these terms and conditions apply or cancel delivery of Materials or Works at any time before the Materials or Works are delivered by giving written notice to the Customer. On giving such notice PPEL shall repay to the Customer any money paid by the Customer for the Materials or Works. PPEL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 The Customer may cancel delivery of the Materials and/or Works by written notice served within forty-eight (48) hours of placement of the order. Failure by the Customer to otherwise accept delivery of the Materials and/or Works shall place the Customer in breach of this Contract.
- 20.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**21. Suspension of Works**

- 21.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) PPEL 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 Customer, 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 Customer; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to PPEL by a particular date; and
    - (iv) PPEL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
  - (b) if PPEL 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 Customer or by any person claiming through the Customer; 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 PPEL exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to PPEL under the Contract and Commercial Law Act 2017; or
    - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of PPEL suspending work under this provision;
  - (d) due to any act or omission by the Customer, the Customer effectively precludes PPEL from continuing the Works or performing or complying with PPEL's obligations under this Contract, then without prejudice to PPEL's other rights and remedies, PPEL may suspend the Works immediately after serving on the Customer 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 PPEL as a result of such suspension and commencement shall be payable by the Customer as if they were a variation.
- 21.2 If pursuant to any right conferred by this Contract, PPEL suspends the Works and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, PPEL shall be entitled to terminate the Contract, in accordance with clause 20.

**22. Privacy Policy**

- 22.1 All emails, documents, images or other recorded information held or used by PPEL is “**Personal Information**” as defined and referred to in clause 22.3 and therefore considered confidential. PPEL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (“the Act”) including Part II of the OECD Guidelines and as set out in the Act. PPEL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by PPEL that may result in serious harm to the Customer, PPEL will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to PPEL in respect of Cookies where the Customer utilises PPEL’s website to make enquiries. PPEL 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 Customer’s:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to PPEL when PPEL sends an email to the Customer, so PPEL may collect and review that information (“collectively Personal Information”)
- If the Customer consents to PPEL’s use of Cookies on PPEL’s website and later wishes to withdraw that consent, the Customer may manage and control PPEL’s privacy controls via the Customer’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Customer authorises PPEL or PPEL’s agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including, name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer’s creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by PPEL from the Customer directly or obtained by PPEL 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 Customer.
- 22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Customer shall have the right to request (by e-mail) from PPEL, a copy of the Personal Information about the Customer retained by PPEL and the right to request that PPEL correct any incorrect Personal Information.
- 22.6 PPEL will destroy Personal Information upon the Customer’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.7 The Customer can make a privacy complaint by contacting PPEL via e-mail. PPEL will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

**23. Service of Notices**

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party’s last known email address.
- 23.2 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.

**24. Trusts**

- 24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust (“Trust”) then whether or not PPEL may have notice of the Trust, the Customer covenants with PPEL as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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 Customer against the Trust, the trustees and or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Customer will not during the term of the Contract without consent in writing of PPEL (PPEL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust fund or trust property.



**25. General**

- 25.1 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).
- 25.2 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.
- 25.3 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 Levin, New Zealand.
- 25.4 Subject to the CGA, the liability of PPEL and the Customer under this Contract shall be limited to the Price.
- 25.5 PPEL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 25.6 The Customer cannot licence or assign without the written approval of PPEL.
- 25.7 PPEL 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 Customer agrees and understands that they have no authority to give any instruction to any of PPEL's sub-contractors without the authority of PPEL.
- 25.8 The Customer agrees that PPEL may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for PPEL to provide Works to the Customer.
- 25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to PPEL, following cessation of a Force Majeure.
- 25.10 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.