

1. Definitions

- 1.1 “Contractor” shall mean L B White Ltd its successors and assigns or any person acting on behalf of and with the authority of L B White Ltd.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Contractor to the Client.
- 1.3 “Guarantor” shall mean that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Equipment” shall mean all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Client.
- 1.5 “Goods” shall mean all Goods supplied by the Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Client.
- 1.6 “Services” shall mean all services supplied by the Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7 “Price” shall mean the price payable for the Goods as agreed between the Contractor and the Client in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Contractor from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Contractor.
- 2.4 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, 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.
- 2.5 Goods are supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Price And Payment

- 3.1 At the Contractor's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Contractor to the Client in respect of Goods supplied; or
 - (b) the Contractor's quoted Price (subject to clause 3.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 3.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to fluctuations in the currency exchange rate, or as a result of increases to the Contractor in the cost of materials and labour) will be charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At the Contractor's sole discretion a non-refundable deposit may be required.
- 3.4 At the Contractor's sole discretion:
 - (a) payment shall be due before delivery of the Goods
 - (b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Contractor.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 At the Contractor's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at the Contractor's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Contractor or the Contractor's nominated carrier).
- 4.2 At the Contractor's sole discretion the costs of delivery are in addition to the Price; or
- 4.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.4 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 4.5 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.

5. Risk

- 5.1 If the Contractor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

5.3 The Client acknowledges and agrees that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Accordingly the Client agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.

6. Access

6.1 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.

7. Underground Locations

7.1 Prior to the Contractor commencing any work 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 & 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.

7.2 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 7.1.

8. Title

8.1 The Contractor and Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid the Contractor all amounts owing for the particular Goods; 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.

8.2 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 the Goods shall continue.

8.3 It is further agreed that:

- (a) where practicable the Goods 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 Goods shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Goods or any of them to the Contractor. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Client is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Contractor for the Goods, on trust for the Contractor; and
- (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Contractor will be the owner of the end products; and
- (e) if the Client fails to return the Goods to the Contractor then the Contractor or the Contractor's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and the Contractor will not be liable for any reasonable loss or damage suffered as a result of any action by the Contractor under this clause.

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

9.1 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 Goods previously supplied by the Contractor to the Client (if any) and all Goods that will be supplied in the future by the Contractor to the Client.

9.2 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 Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Contractor; and
- (d) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.3 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.

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

9.5 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.

9.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 9.1 to 9.5.

10. Security And Charge

10.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:
(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several

interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.

11. Client's Disclaimer

- 11.1 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 Goods are bought relying solely upon the Client's skill and judgment.

12. Defects

- 12.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, 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) replacing the Goods or repairing the Goods.

13. Returns

- 13.1 Returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 12.1; and
 - (b) the Contractor has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - (d) the Contractor will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods 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.
- 13.2 The Contractor may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.
- 13.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

14. Warranty

- 14.1 Subject to the conditions of warranty set out in Clause 14.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within six (6) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 14.2 The conditions applicable to the warranty given by Clause 14.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods 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.
- 14.3 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. 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 Goods.
- 14.4 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

15. Consumer Guarantees Act 1993

- 15.1 If the Client is acquiring Goods 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 Goods by the Contractor to the Client.

16. Intellectual Property

- 16.1 Where the Contractor has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.

- 16.2 The Client warrants that all designs or instructions 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.
- 16.3 The Client agrees that the Contractor may use any documents, designs, drawings or Goods created by the Contractor for the purposes of advertising, marketing, or entry into any competition.

17. Default & Consequences Of Default

- 17.1 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Contractor.
- 17.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.
- 17.4 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 supply of Goods to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 17.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 17.6 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 unfulfilled 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.

18. Cancellation

- 18.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.
- 18.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

19. Privacy Act 1993

- 19.1 The Client and the Guarantor/s (if separate to the Client) authorises the Contractor to:
- (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by the Contractor from the Client and/or Guarantors 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 and/or Guarantors.
- 19.2 Where the Client and/or Guarantors are an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client and/or Guarantors shall have the right to request the Contractor for a copy of the information about the Client and/or Guarantors retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Client and/or Guarantors held by the Contractor.

20. Unpaid Contractor's Rights

- 20.1 Where the Client has left any item with Contractor for repair, modification, exchange or for the Contractor to perform any other Service in relation to the item and Contractor has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Contractor shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Contractor is in possession of the item;
 - (c) a right to sell the item.
- 20.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

21. Equipment Hire

- 21.1 The Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that the Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Client the full cost of repairing the Equipment. In the event Equipment is not returned at all the Contractor shall have right to charge the Client the full cost of replacing the Equipment.

- 21.2 The Client shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.
- 21.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

22. Construction Contract Act 2002

- 22.1 The Client hereby expressly acknowledges that:
- (a) the Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to 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 work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Contractor exercises the right to suspend work, 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 work under this provision.

23. General

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 23.5 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 is in dispute.
- 23.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.7 The Contractor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any 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.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 23.9 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.