

TERMS AND CONDITIONS OF TRADE

Repair of Defects

Each party shall be liable for the repair of defects in the materials or workmanship which are notified within a reasonable time of receiving written notification of those defects. The Contractor shall not be liable under this clause to remedy:

- defects covered by a manufacturer's or supplier's guarantee that is available to and may be enforced by the Customer;
- defects in or damage caused by work undertaken by the Customer or the any of the Customer's contractors.
-
-

- defects covered by a manufacturer's or supplier's guarantee that is available to and may be enforced by the Customer;
- defects in or damage caused by work undertaken by the Customer or the any of the Customer's contractors.

9. Risk and Insurance

Any goods supplied by the Contractor shall be at the sole risk of the Contractor until the earlier of payment for the goods and delivery of the goods to the Customer.

If the Building Work involves an extension or alteration to existing premises, the Customer shall be solely responsible for arranging an extension of the Customer's insurance policy to provide insurance cover for all associated risks.

10. Ownership

Ownership of any goods and/or materials supplied as part of the Building Work shall not pass to the Customer until all amounts owing by the Customer to the Contractor in respect of the goods and/or materials have been paid in full.

The Customer acknowledges and agrees that by assenting to these terms & conditions, the Customer grants a Purchase Money Security Interest to the Contractor, as that term is defined in the Personal Property Securities Act 1999 ("PPSA"), in all goods and/or materials supplied by the Contractor to the Customer.

The Customer irrevocably undertakes to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register. The costs of registering a financing statement or a financing change statement shall be met by the Customer and may, where applicable, be debited against the Customer's credit account with the Contractor. The Customer shall not agree to allow any person to register a financing statement over any of the goods supplied by the Contractor without the prior written consent of the Contractor and will immediately notify the Contractor in writing if the Customer becomes aware of any person taking steps to register a financing statement in relation to such goods.

The Customer:

- (a) waives its rights to:
- (i) receive a copy of any verification statement;
 - (ii) receive a copy of any financing change statement;

TERMS AND CONDITIONS OF TRADE

(b) If the Goods are for the Customer's business use, the Customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 of the PPSA.

The Customer irrevocably grants to Bruce Hallinan the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Bruce Hallinan has cause to exercise any of Bruce Hallinans rights under section 109 of the PPSA, and the Customer shall indemnify Bruce Hallinan from any claims made by any third party as a result of such exercise.

Bruce Hallinan and the Customer agree that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA will apply to these terms and conditions, or the security interest under these terms and conditions.

The Customer will be responsible to Bruce Hallinan for any costs or damages incurred in reclaiming and disposing of the unpaid goods and/or materials. Such costs include but are not limited to loss in value, cost or repossession, damaged premises and recovery, storage, resale and legal costs, on a solicitor and client basis. These costs shall be recoverable as a debt due to Bruce Hallinan by the Customer.

11. Warranty and Liability

The warranties, descriptions, representations, or conditions whether implied by law, trade, custom or otherwise are, and all other liability of Bruce Hallinan, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law.

Insofar as Bruce Hallinan may be liable, notwithstanding anything contained in these terms and conditions, to the extent permitted by law the total liability of Bruce Hallinan whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly out of completion of the Building Work or any other breach of Contract's obligations is limited to the lesser of:

- (a) to the price of goods and/or materials complained of;
- (b) the cost of completing any necessary repairs/remedial work; or
- (c) the actual loss or damage suffered by the Customer.

Except where statute expressly requires otherwise Bruce Hallinan is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

12. Collection and Use of Information

The Customer authorises Bruce Hallinan to collect, retain and use any information about the Customer for the purpose of assessing the Customer's creditworthiness and/or enforcing any rights under this contract.

The Customer authorises Bruce Hallinan to disclose any information obtained to any person for the purposes set out in this clause. Where the Customer is a natural person, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.

13. Miscellaneous

Bruce Hallinan shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond his control.

Failure by Bruce Hallinan to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations he has under this contract.

TERMS AND CONDITIONS OF TRADE

If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or implied.

The Customer may not assign any of its rights or obligations under this contract without the prior written consent of Bruce Hallinan.

14. Personal Guarantee

In consideration for Bruce Hallinan agreeing to complete the Building Work at the request of the Customer, where the Customer is a company or trust, the directors or trustees signing this contract also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Bruce Hallinan the payment of any and all moneys owed by the Customer to Bruce Hallinan and indemnify Bruce Hallinan against non-payment by the Customer.

15. Governing Law

The within terms and conditions shall be governed by and construed in accordance with the laws of New Zealand and the parties shall submit to the exclusive jurisdiction of the New Zealand Courts.

16. Agency

The Customer authorises Bruce Hallinan to contract either as principal or agent for the provision of goods or services.

Where Bruce Hallinan enters into a contract of the type referred to this clause the Customer agrees to pay any amounts due under that contract.

Any list of proposed subcontractors supplied by Bruce Hallinan is provided on a without prejudice basis and Bruce Hallinan reserves the exclusive right to change subcontractors without adjustment to the quotation.

17. Dispute Resolution

In the event of a dispute or disagreement arising between Bruce Hallinan and the Customer the party with a grievance may give written notice to the other party specifying the nature of the dispute or disagreement, the remedy sought and requiring that the dispute or disagreement be determined and settled in accordance with this clause.

On receipt of the notice, the parties shall each appoint a representative who has authority to determine the grievance or dispute, and those two representatives shall meet as soon as reasonably possible to see if they can determine the grievance. All discussions, meetings and correspondence between the two representatives shall be deemed without prejudice and without concession of liability and shall not be used by either party in any later proceedings unless:

- (a) Both parties agree, or
- (b) The two representatives reach agreement, but one party fails to honour such agreement.

If the two representatives cannot within fourteen (14) days of being appointed reach agreement on how the grievance or dispute is to be determined, the parties shall refer the dispute to an independent expert who is acceptable to both parties. If the parties cannot or do not agree on an independent expert within three (3) days of the first suggestion of a suitable person, either party may ask the President of the New Zealand Registered Master Builders Federation to nominate a person to act as an independent expert and the first person so nominated who is able and willing to be appointed shall be deemed the independent expert for the purposes of this clause. The independent expert shall:

TERMS AND CONDITIONS OF TRADE

- (a) Set his or her own rules and procedure for the resolution of the grievance or disagreement
- (b) At all times act in good faith and in an unbiased way
- (c) Promptly hear and determine the dispute
- (d) Provide a written decision (with reasons for that decision) if requested by either party.

The independent expert's:

- (a) Decision shall be binding on both parties:
- (b) Costs shall be paid equally by the parties unless the independent expert decides otherwise in his or her decision.

Notwithstanding anything contained in clause 17, disputes in excess of ten thousand dollars (\$10,000.00) shall be referred at Contract's sole discretion to arbitration under the Arbitration Act 1996 or any subsequent Act passed in its place.

18. Mortgage [SELECT OPTION]The Customer agrees that should any goods or materials ("Goods") supplied by Bruce Hallinan be affixed or installed in a property such as to render them a fixture of that property, the Customer agrees that in consideration of Bruce Hallinan allowing the goods to be so affixed or installed, the Customer shall upon written demand being made by Bruce Hallinan at any time but before payment in full is made to Bruce Hallinan, execute a Memorandum of Mortgage ("Mortgage") over the property in which the goods have become a fixture in favour of Bruce Hallinan (to be prepared by Bruce Hallinan's solicitors at the Customer's cost), for the amount equivalent to the unpaid balance owing plus any interest and costs owing thereon until paid in full. The terms of such mortgage shall be collateral to the terms hereof and payment in full of the amounts owing to Bruce Hallinan hereunder shall operate as a full discharge of the mortgage. Bruce Hallinan agrees not to make demand on the Customer to execute such a mortgage unless any of the following occur:

- (a) Failures to make payment on the due date;
- (b) Any composition with creditors, act of bankruptcy, winding up or receivership of the Customer.

The Mortgage referred to in this clause 18 hereof shall be the ADLS form approved by the Registrar General of Land 2007/4237, and the covenants of the said form whether executed by the Customer or not shall be deemed to be included. The Customer hereby authorises Bruce Hallinan to lodge and maintain a Caveat against the title to the property in which the goods have been affixed or installed for the protection of the agreement to mortgage described above should Bruce Hallinan in its absolute discretion consider it necessary to lodge such a Caveat. The Customer hereby grants to Bruce Hallinan an irrevocable power of attorney in relation to the property in which the goods have been affixed or installed to enable Bruce Hallinan to execute the mortgage referred to in this clause 18 hereof should the mortgage not be executed by the Customer for any reason whatsoever provided that Bruce Hallinan will not execute a mortgage as attorney for the Customer unless Bruce Hallinan has requested in writing that the Customer execute the mortgage pursuant to the terms of this agreement and the Customer has failed to execute such a mortgage within five (5) working days of such request.