

CREDIT ACCOUNT APPLICATION



To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: _____

CUSTOMER'S TRADE NAME: _____

CUSTOMER'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

Postcode: _____ Postcode: _____

COMMERCIAL CUSTOMERS ONLY

Company Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

Postcode: _____ Date of Birth: _____ Postcode: _____ Date of Birth: _____

Home Phone: _____ ID Type: _____ Home Phone: _____ ID Type: _____

Bank & Branch Details: _____ **Account No Details:** _____

Accountant's Name: _____ **Address & Contact Details:** _____

TRADE REFERENCES

Business Name 1: _____ Business Name 2: _____

Address or A/C No: _____ Address or A/C No: _____

Phone: _____ Phone: _____

Fax: _____ Fax: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (attached) of H G Leach & Co Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.**

This is a Credit Account Application Form under the Construction Contracts Act 2002. If you are a "Residential Occupier" please read clause 20 on the reverse.

SIGNED (COMPANY): _____ **SIGNED (CUSTOMER):** _____

Name: _____ Name: _____

Position: _____ Position: _____

FOR OFFICE USE ONLY

Customer Code: _____

Approved / Declined: _____

Date: _____

WITNESS TO CUSTOMER'S SIGNATURE:

Signed: _____ **Name:** _____

Date: _____

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of H G Leach & Co Ltd and its successors and assigns ("the Company") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

_____ ("the Customer") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to the Company of all moneys which are now owing to the Company by the Customer and all further sums of money from time to time owing to the Company by the Customer in respect of goods and services supplied or to be supplied by the Company to the Customer or any other liability of the Customer to the Company, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Company, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guaranty and Indemnity. If for any reason the Customer does not pay any amount owing to the Company the Guarantor will immediately on demand pay the relevant amount to the Company. In consideration of the Company agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to the Company registering any interest so charged. The Guarantor irrevocably appoints the Company and each director of the Company as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Company may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Person Property Securities Register;
 - register any other document required to be registered by the PPSA or any other law; or
 - correct a defect in a statement referred to in clause 1(a) or 1(b).
- HOLD HARMLESS AND INDEMNIFY** the Company on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Company in connection with:
 - the supply of goods and/or services to the Customer; or
 - the recovery of moneys owing to the Company by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Company's nominees costs of collection and legal costs; or
 - moneys paid by the Company with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Company, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Company to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood the Company's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Company by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Company's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Company, each Guarantor shall be a principal debtor and liable to the Company accordingly.
- If any payment received or recovered by the Company is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Company shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Company.**
- I/we irrevocably authorise the Company to obtain from any person or company any information which the Company may require for credit reference purposes. I/We further irrevocably authorise the Company to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Company as a result of this Guarantee and Indemnity being actioned by the Company.
- The above information is to be used by the Company for all purposes in connection with the Company considering this Guarantee and Indemnity and the subsequent enforcement of the same.

<p>GUARANTOR-1 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this day of 20____</p>	<p>GUARANTOR-2 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this day of 20____</p>
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Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
 2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

1. Definitions

- 1.1 "Company" shall mean H G Leach & Co Ltd its successors and assigns or any person acting on behalf of and with the authority of H G Leach & Co Ltd.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Company to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by the Company to the Customer (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 Company to the Customer.
- 1.5 "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Company and the Customer in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Company.
- 2.4 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.
- 2.5 Goods are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer'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 Company's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
 - (b) the Company's current price at the date of delivery of the Goods according to the Company's current Price list; or
 - (c) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation. Any variation from the plan of scheduled Works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to the Company's in the cost of Goods and labour), will be detailed in writing and charged on the basis of the Company's quotation and will be shown as a variation on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At the Company's sole discretion a deposit may be required.
- 3.4 At the Company's sole discretion:
 - (a) payment for approved Customers shall be made by instalments in accordance with the Company's payment schedule; or
 - (b) payment for approved Customers shall be due twenty (20) days following the end of the month in which a

statement is posted to the Customer's address or address for notices.

- 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Company reserves the right to treat retentions as placing the Customer's account into default.
- 3.7 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 Customer and the Company.
- 3.8 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 Company's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Company or the Company's nominated carrier).
- 4.2 At the Company's sole discretion the costs of delivery are:
 - (a) in addition to the Price; or
 - (b) for the Customer's account.
- 4.3 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Company claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Company's control, including but not limited to any failure by the Customer to:
 - (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify the Company that the site is ready.
- 4.4 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 4.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.6 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7 Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

5. Risk

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

6. Damages

- 6.1 The Customer shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake the works. The Company 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 Company.

7. Underground Locations

- 7.1 Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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 site.
- 7.2 Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company 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 Company and Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Company all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 8.2 Receipt by the Company 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 Company'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 Company shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Company for the Goods, on trust for the Company; and
 - (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products; and
 - (e) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and the Company will not be liable for any reasonable loss or damage suffered as a result of any action by the Company under this clause.

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

- 9.1 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 Goods previously supplied by the Company to the Customer (if any) and all Goods that will be supplied in the future by the Company to the Customer.
- 9.2 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 the Company 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 Company 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 Company; and
 - (d) immediately advise the Company 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 Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer 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 Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by the Company 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 Company may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company'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 Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer'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. Customer's Disclaimer

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

12. Defects

- 12.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer 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 Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.
- 12.2 Goods will not be accepted for return other than in accordance with 12.1 above.

13. Warranty

- 13.1 To the extent permitted by statute, no warranty is given by the Company as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

14. Consumer Guarantees Act 1993

- 14.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Customer.

15. Default & Consequences Of Default

- 15.1 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 Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Company.
- 15.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.

- 15.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 15.5 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.

- 15.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer 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 Customer or any asset of the Customer.

16. Insurance

- 16.1 The Company shall have public liability insurance of at least \$5m. It is the Customers responsibility to ensure that they are similarly insured.

17. Compliance with Laws

- 17.1 The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 17.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 17.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Cancellation

- 18.1 The Company 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 Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by the Company (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 Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

19. Privacy Act 1993

- 19.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
- (b) disclose information about the Customer and/or Guarantors, whether collected by the Company from the Customer and/or Guarantors directly or obtained by the Company 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 and/or Guarantors.
- 19.2 Where the Customer 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 Customer and/or Guarantors shall have the right to request the Company for a copy of the information about

the Customer and/or Guarantors retained by the Company and the right to request the Company to correct any incorrect information about the Customer and/or Guarantors held by the Company.

20. Construction Contract Act 2002

- 20.1 The Customer hereby expressly acknowledges that:
- (a) the Company 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 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 the Company by a particular date; and
- (iv) the Company has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Company 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 the Company 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 Company under the Contractual Remedies Act 1979; 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 the Company suspending work under this provision.

21. General

- 21.1 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.
- 21.2 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.
- 21.3 The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 21.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 21.5 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 the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.7 The Company 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 Company notifies the Customer of such change.
- 21.8 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.
- 21.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.