

Cutting Edge Cabinetry Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "CECL" means Cutting Edge Cabinetry Limited, its successors and assigns.
 - 1.2 "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.
 - 1.3 "Cooling-Off Period" means a set time period within which the Customer has a right to cancel this Contract without penalty.
 - 1.4 "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 CECL'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.
 - 1.5 "Customer" means the person's, entities or any person acting on behalf of and with the authority of the Customer requesting CECL to provide the Services 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.
 - 1.6 "Goods" means all Goods or Services supplied by CECL to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 - 1.7 "Site" means the address nominated by the Customer to which the Goods are to be supplied by CECL.
 - 1.8 "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 Services.
 - 1.9 "Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
 - (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.
 - 1.10 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between CECL and the Customer in accordance with clause 7 below.
 2. **Cooling off Period**
 - 2.1 The Customer shall be able to terminate this Contract (subject to clause 21.3) within seven (7) clear business days following receipt from CECL of a signed copy of this Contract.
 - 2.2 To terminate this Contract, the Customer must notify CECL in writing, which clearly states that the Customer rescinds the Contract, within the timeframe specified in clause 2.1 above in accordance with clause 25.
 - 2.3 Once the withdrawal notice is issued to CECL, then:
 - (a) the Contract is taken to be rescinded from the time it was signed; and
 - (b) CECL may retain out of any money already paid to CECL by the Customer the amount of any reasonable out of pocket expenses that CECL has incurred before the Contract was rescinded; and
 - (c) CECL shall be entitled to be paid a reasonable amount for any Services undertaken prior to the date the Contract was rescinded.
 3. **Acceptance**
 - 3.1 Subject to clause 2, the Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
 - 3.2 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.
 - 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
 - 3.4 The Customer acknowledges that:
 - (a) The supply of Goods on credit shall not take effect until the Customer has completed a credit application with CECL and it has been approved with a credit limit established for the account;
 - (b) In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, CECL reserves the right to refuse Delivery;
 - (c) Any advice, recommendation, information, assistance or service provided by CECL in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on CECL's own knowledge and experience and shall be accepted without liability on the part of CECL. Where such advice or recommendations are not acted upon then CECL shall require the Customer or their agent to authorise commencement of the Services in writing. CECL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
 - 3.5 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.
 4. **Authorised Representatives**
 - 4.1 Unless otherwise limited as per clause 4.2, the Customer agrees that should the Customer introduce any third party to CECL as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order or request, any variation thereto, any Goods and/or Services, on the Customer's behalf (such authority shall continue until all requested Goods and/or Services have been delivered, or the Customer otherwise notifies CECL in writing that said person is no longer the Customer's duly authorised representative).
 - 4.2 In the event that the Customer's duly authorised representative, as per clause 4.1, is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise CECL in writing of the parameters of the limited authority granted to their representative.
 - 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to CECL for all additional costs incurred by CECL (including CECL's profit margin) in providing any Goods and/or Services, or variations thereto, requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
 5. **Errors and Omissions**
 - 5.1 The Customer acknowledges and accepts that CECL 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 CECL 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 CECL in respect of the Services.
 - 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of CECL, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
 6. **Change in Control**
 - 6.1 The Customer shall give CECL 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 and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by CECL as a result of the Customer's failure to comply with this clause.
 7. **Price and Payment**
 - 7.1 At CECL's sole discretion the Price shall be either:
 - (a) As indicated on any invoice provided by CECL to the Customer; or
 - (b) CECL's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.CECL reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Site, availability of machinery, safety considerations and/or health hazards (such as the discovery of asbestos, etc.), prerequisite work by any third party not being completed, obscured building defects, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, inaccurate measurements, plans or specifications supplied by the Customer, lack of required utilities, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to CECL in the cost of labour or materials which are beyond CECL's control.Variations will be charged for on the basis of CECL's quotation, and will be detailed in writing, and shown as variations on CECL's invoice. The Customer shall be required to respond to any variation submitted by CECL within ten (10) working days. Failure to do so will entitle CECL 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.
 - 7.4 At CECL's sole discretion a non-refundable deposit may be required.
 - 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by CECL, which may be:
 - (a) On or before delivery/completion of the Goods and/or Services;
 - (b) By way of progress payments in accordance with CECL's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the Site but not yet installed;
 - (c) For certain approved Customers, 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;
 - (d) The date specified on any invoice or other form as being the date for payment; or
 - (e) Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by CECL.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 Services during which time all Services 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 section 18(a) to 18(f) of the Construction Contracts Act 2002.
 - 7.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and CECL.
 - 7.7 CECL may in its discretion allocate any payment received from the Customer towards any invoice that CECL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer CECL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CECL, payment will be deemed to be allocated in such manner as preserves the maximum value of CECL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
 - 7.8 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 CECL nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to CECL an amount equal to any GST CECL must pay for any supply by CECL under this or any other contract for the sale of the Goods. 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.
 8. **Provision of the Services**
 - 8.1 Subject to clause 8.2 it is CECL's responsibility to ensure that the Services start as soon as it is reasonably possible.
 - 8.2 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that CECL claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond CECL'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 Services; or
 - (c) notify CECL that the Site is ready.CECL may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 8.3 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (a) The Customer or the Customer's nominated carrier takes possession of the Goods at CECL's address; or
 - (b) CECL (or CECL's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.At CECL's sole discretion the cost of delivery is included in the Price.
 - 8.4 Any time specified by CECL for delivery of the Services is an estimate only and CECL 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 Services to be supplied at the time and place as was arranged between both parties. In the event that CECL is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then CECL shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.
 9. **Risk**
 - 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
 - 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, CECL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CECL is sufficient evidence of CECL's rights to receive the insurance proceeds without the need for any person dealing with CECL to make further enquiries.
 - 9.3 If the Customer requests CECL to leave Goods outside CECL's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
 - 9.4 Where CECL is to both supply and install Goods then CECL shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
 - 9.5 Granite, marble, caesarsstone, timber, glass and all other natural products used to complete the Services have natural elements in them which have naturally occurring variations in colour and shade tones, markings, and veining may vary from colour samples provided. CECL gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. CECL will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.
 - 9.6 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos) that CECL, or CECL's employees, reasonably form the opinion that the Customer's premises is not safe for the Services to proceed then CECL shall be entitled to delay the provision of the Services (in accordance with clause 8.1) until CECL is satisfied that it is safe for the installation to proceed.
 - 9.7 The Customer acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in CECL's or manufacturers fact sheets, price lists or advertising material are indicative only and that they have not relied on such information;
 - (b) remove any furniture, personal items and all fragile items from the vicinity of the Services (and provide adequate protective dust sheets where necessary), and agrees that CECL shall not be liable for any damage caused to those items through the Customers failure to comply with this clause;
 - (c) be wholly responsible for animals and/or children on the site;
 - (d) be wholly responsible for the removal of rubbish from or clean-up of the site;
 - (e) supply power, toilet, eating and first aid facilities if so required; and
 - (f) Goods (including but not limited to paint, timber, tiles) supplied may:
 - (i) exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. CECL will make every effort to match batches/samples of the Goods (as per clause 9.5) supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur; and
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
 - (g) agrees that whilst CECL shall take all reasonable care during the performance of the Services, the Customer agrees that CECL shall not be held liable for any loss, damages, or costs whatsoever resulting from drilling or fixing the Goods into any masonry or rendered surfaces during the installation process.
- Marble and Granite are porous products, and therefore, Goods are sealed for protection. However, oil and other acidic substances are prone to causing discoloration and staining if left on surfaces for some time. The Customer agrees to indemnify CECL against any damage occurring after delivery and installation. CECL shall upon installation ensure that all Goods are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Customer specifically requires the Goods to be installed in any way which goes against CECL's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to CECL. Accordingly, CECL offers no warranty in regards to the aforementioned.
10. **Dimensions, Plans and Specifications**
- 10.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless the Customer and CECL agree otherwise in writing.
- 10.2 CECL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 10.3 If the giving of an estimate or quotation for the supply of Goods involves CECL estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of CECL's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
- 10.4 Should the Customer require any changes to CECL's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
11. **Hidden Services**
- 11.1 Prior to CECL commencing any work the Customer must advise CECL of the precise location of all hidden services on the Servicesite and clearly mark the same (including but not limited to any mains/services in wall cavities). The 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 the Servicesite.
- 11.2 Whilst CECL will take all care to avoid damage to any services the Customer agrees to indemnify CECL 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 11.1.
12. **Compliance with Laws**
- 12.1 The Customer and CECL 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 including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 12.3 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") CECL agrees at all times 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 Servicesite or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.
- 12.4 Where the Customer has supplied materials for CECL to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. However, if in CECL's opinion, it is believed that the materials supplied will not conform to current regulations, then CECL shall be entitled, without prejudice, to halt the Services until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be invoiced in accordance with clause 7.2.
13. **Title**
- 13.1 CECL and the Customer agree that ownership of the Goods shall not pass until:
 - (a) The Customer has paid CECL all amounts owing to CECL; and
 - (b) The Customer has met all of its other obligations to CECL.Receipt by CECL 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.
- 13.2 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 13.1:
 - (a) The Customer is only a bailee of the Goods and must return the Goods to CECL on request;
 - (b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for CECL and must pay to CECL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for CECL and must pay or deliver the proceeds to CECL on demand;
 - (d) The Customer should not convert or process the Goods 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 CECL and must sell, dispose of or return the resulting product to CECL as it so directs;
 - (e) The Customer irrevocably authorises CECL to enter any premises where CECL believes the Goods are kept and recover possession of the Goods;
 - (f) CECL may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of CECL; and
 - (h) CECL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
14. **Personal Property Securities Act 1999 ("PPSA")**
- 14.1 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 that have previously been supplied and that will be supplied in the future by CECL to the Customer, and the proceeds from such Goods.
- 14.2 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 CECL may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;

Cutting Edge Cabinetry Limited – Terms & Conditions of Trade

- (b) Indemnify, and upon demand reimburse, CECL for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) Not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of CECL; and
- (d) Immediately advise CECL 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.
- 14.3 CECL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by CECL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Customer shall unconditionally ratify any actions taken by CECL under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
15. **Security and Charge**
- 15.1 In consideration of CECL agreeing to supply the Goods, 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.
- 15.2 The Customer indemnifies CECL from and against all CECL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CECL's rights under this clause.
- 15.3 The Customer irrevocably appoints CECL and each director of CECL as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.
16. **Defects**
- 16.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify CECL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford CECL 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 CECL has agreed in writing that the Customer is entitled to reject, CECL's liability is limited to either (at CECL's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) CECL has agreed in writing to accept the return of the Goods; and
- (b) The Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
- (c) CECL will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) 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.
- 16.3 CECL will not accept the return of Goods for credit.
- 16.4 Subject to clause 16.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.
17. **Warranty**
- 17.1 Subject to the conditions of warranty set out in clause 17.2 CECL warrants that if any defect in any Goods manufactured or Services provided by CECL becomes apparent and is reported to CECL within twelve (12) months of the date of Delivery (time being of the essence) then CECL will either (at CECL's sole discretion) replace or remedy the defect.
- 17.2 The conditions applicable to the warranty given by clause 17.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) Failure on the part of the Customer to properly maintain any Goods or serviced item; or
- (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by CECL; or
- (iii) Any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
- (iv) The continued use of any Goods 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 CECL shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without CECL's consent.
- (c) In respect of all claims CECL shall not be liable to compensate the Customer for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Customer's claim.
- 17.3 For Goods not manufactured by CECL, the warranty shall be the current warranty provided by the manufacturer of the Goods. CECL 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.
- 17.4 To the extent permitted by statute, no warranty is given by CECL as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. CECL shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 17.5 The conditions applicable to the warranty given on Goods supplied by CECL are contained on the "Warranty Documentation" that will be supplied with the Goods.
18. **Consumer Guarantees Act 1993**
- 18.1 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 ("CGA") do not apply to the supply of Goods by CECL to the Customer.
19. **Intellectual Property**
- 19.1 Where CECL has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of CECL. Under no circumstances may such designs, drawings and documents be used without the express written approval of CECL.
- 19.2 The Customer warrants that all designs, specifications or instructions given to CECL will not cause CECL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify CECL against any action taken by a third party against CECL in respect of any such infringement.
- 19.3 The Customer agrees that CECL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, digital images, drawings or Goods which CECL has created for the Customer.
20. **Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at CECL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes CECL any money the Customer shall indemnify CECL from and against all costs and disbursements incurred by CECL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CECL's collection agency costs, and bank disbursement fees).
- 20.3 Further to any other rights or remedies CECL may have under this Contract, if a Customer has made payment to CECL, 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 CECL under this clause 20 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.
- 20.4 Without prejudice to CECL's other remedies at law CECL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to CECL shall, whether or not due for payment, become immediately payable if:
- (a) Any money payable to CECL becomes overdue, or in CECL'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 CECL;
- (c) 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
- (d) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
21. **Cancellation**
- 21.1 Without prejudice to any other rights or remedies CECL may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice/s) then CECL may suspend the Services immediately. CECL will not be liable to the Customer for any loss or damage the Customer suffers because CECL has exercised its rights under this clause.
- 21.2 CECL 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 CECL shall repay to the Customer any money paid by the Customer for the Goods. CECL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by CECL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for Goods 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.
22. **Suspension of Services**
- 22.1 Where the Contract is subject to the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) CECL 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 7.5 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 CECL by a particular date; and
- (iv) CECL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) If CECL 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 CECL exercises the right to suspend Services, the exercise of that right does not:
- (i) Affect any rights that would otherwise have been available to CECL 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 CECL suspending Services under this provision;
- (d) Due to any act or omission by the Customer, the Customer effectively precludes CECL from continuing the Services or performing or complying with CECL's obligations under this Contract, then without prejudice to CECL's other rights and remedies, CECL may suspend the Services 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 Services is based. All costs and expenses incurred by CECL as a result of such suspension and commencement shall be payable by the Customer as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, CECL suspends the Services and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, CECL shall be entitled to terminate the Contract, in accordance with clause 21.
23. **Dispute Resolution**
- 23.1 Where a dispute arises between the parties, it will be referred to CECL and the Customer's directors for resolution. CECL and the Customer agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 23.2 The dispute resolution process will be as follows:
- (a) A party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the Parties fail to determine the dispute within the Negotiation Period, the Parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the Parties) to reach agreement on:
- (i) a mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);
- (ii) the steps to be taken by each Party and the timing of those steps;
- (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses; and
- (b) if the Parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either CECL or the Customer may commence court proceedings or arbitration proceedings to resolve the dispute.
24. **Privacy Policy**
- 24.1 All emails, documents, images or other recorded information held or used by CECL is "Personal Information" as defined and referred to in clause 24.3 and therefore considered confidential. CECL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Acts 1993 and 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. CECL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by CECL, that may result in serious harm to the Customer, CECL will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to CECL in respect of Cookies where the Customer utilises CECL's website to make enquiries. CECL 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 CECL when CECL sends an email to the Customer, so CECL may collect and review that information ("collectively Personal Information")
- If the Customer consents to CECL's use of Cookies on CECL's website and later wishes to withdraw that consent, the Customer may manage and control CECL's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Customer authorises CECL or CECL'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 CECL from the Customer directly or obtained by CECL 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.
- 24.3 Where the Customer is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Acts 1993 and 2020.
- 24.4 The Customer shall have the right to request (by e-mail) from CECL, a copy of the Personal Information about the Customer retained by CECL and the right to request that CECL correct any incorrect Personal Information.
- 24.6 CECL 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. The Customer can make a privacy complaint by contacting CECL via e-mail. CECL 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>.
25. **Service of Notices**
- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) By leaving 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.
- 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.
26. **Trusts**
- 26.1 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 ("Trust") then whether or not CECL has any notice of the Trust, the Customer covenants with CECL as follows:
- (a) The Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) The Customer has full and complete power and authority under the Trust 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 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 without consent in writing of CECL (CECL 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 property.
27. **General**
- 27.1 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. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 27.2 Subject to the CGA, CECL 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 CECL of these terms and conditions (alternatively CECL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.3 CECL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.4 The Customer cannot licence or assign without the written approval of CECL. CECL may elect to subcontract out any part of the Services 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 CECL's sub-contractors without the authority of CECL.
- 27.5 The Customer agrees that CECL 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 CECL to provide Goods to the Customer.
- 27.6 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 embargos, 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 a payment to CECL.
- 27.7 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.