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## Bishop Building Limited – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Bishop Building” means Bishop Building Limited, its successors and assigns or any person acting on behalf of and with the authority of Bishop Building Limited.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by Bishop Building to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Works as agreed between Bishop Building and the Client in accordance with clause 5 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with Bishop Building’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Bishop Building.

### 3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Change in Control

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

### 5. Price and Payment

- 5.1 At Bishop Building’s sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by Bishop Building to the Client in respect of Works performed or Materials supplied; or
  - (b) Bishop Building’s Price at the date of delivery of the Works according to Bishop Building’s current pricelist; or
  - (c) Bishop Building’s quoted Price (subject to clause 5.2) which shall be binding upon Bishop Building provided that the Client shall accept Bishop Building’s quotation in writing within thirty (30) days.
- 5.2 Bishop Building reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, site specific defects found on closer inspection, any disassembly work required, limitations to accessing the site, availability of machinery including crane, hoist or other lifting equipment, safety considerations, prerequisite work by a third party not being completed, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to Bishop Building in the cost of labour or Materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Bishop Building’s control.
- 5.3 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Bishop Building, which may be:
  - (a) by way of progress payments in accordance with Bishop Building’s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
  - (b) for certain approved Client’s, due twenty (20) days following the end of the month in which a statement is posted to the Client’s address or address for notices; or
  - (c) the date specified on any invoice or other form as being the date for payment.
- 5.4 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Bishop Building.
- 5.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Bishop Building an amount equal to any GST Bishop Building must pay for any supply by Bishop Building under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.

### 6. Delivery of the Works

- 6.1 Subject to clause 6.2 it is Bishop Building’s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works’ commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Bishop Building claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Bishop Building’s control, including but not limited to any failure by the Client to:
  - (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify Bishop Building that the site is ready.
- 6.3 Bishop Building may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

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- 6.4 The Client shall take delivery of the Materials tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.5 Any time or date given by Bishop Building to the Client is an estimate only. Bishop Building shall not be liable for any loss or damage whatsoever due to failure by Bishop Building to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Bishop Building.
- 7. Risk**
- 7.1 If Bishop Building retains ownership of the Materials under clause 14 then:
- (a) where Bishop Building is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by Bishop Building or Bishop Building's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where Bishop Building is to both supply and install Materials then Bishop Building shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Bishop Building to leave Materials outside Bishop Building's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 Bishop Building shall not be held liable for any delays that result from work by other parties not being completed on time and Bishop Building in conjunction with clause 6.2, may delay the Works until the other work is completed. Where a job is unreasonably delayed, Bishop Building reserves the right to request payment for Works provided up to that date.
- 7.4 The Client accepts that where earthmoving or excavation work has been provided by a third party engaged by the Client and such work is found to be defective or not up to standard, then Bishop Building reserves the right to charge a variation to remedy such work.
- 7.5 Bishop Building shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Bishop Building accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.6 Where the Client has supplied materials for Bishop Building to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Bishop Building shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.7 Unless otherwise stated, only suitable new Materials or the Client's reclaimed timber will be used.
- 7.8 The Client shall be responsible for the removal of rubbish or clean up of the building/construction site/s, and the costs associated with this removal of waste.
- 7.9 The Client acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 7.10 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Bishop Building will make every effort to match sales samples to the finished Materials Bishop Building accepts no liability whatsoever where such samples differ to the finished Materials supplied.
- 7.11 Timber is a hygroscopic material subject to expansion and contraction; therefore Bishop Building will accept no responsibility for gaps that may appear during prolonged dry periods.
- 7.12 The Client acknowledges that variations of colour and texture are inherent in concrete. Bishop Building shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.
- 7.13 Detailed drawings of any services that will be embedded in the concrete are to be provided to Bishop Building prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by Bishop Building for damage to the services or any other element embedded in the concrete.
- 7.14 Bishop Building gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Works such as:
- (a) hairline cracking of paving and grout; or
  - (b) damage caused by contact with chemicals, solvents, oils or any other substances; or
  - (c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 7.15 The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 7.16 Bishop Building shall not be liable for any defect in the Works if the Client does not follow Bishop Building's recommendations, including:
- (a) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
  - (b) that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
  - (c) that no heavy furniture is to be placed on the concrete area for a minimum of twenty-four (24) hours.
- 7.17 Where Bishop Building gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar Works and such advice or recommendations are not acted upon then Bishop Building shall require the Client or their agent to authorise commencement of the Works in writing. Bishop Building shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 7.18 The Client shall supply an area suitable for washing out Bishop Building's equipment and for depositing all unused concrete and slurry.

**8. Client's Responsibilities**

- 8.1 It is the intention of Bishop Building and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding to enable the Works to be undertaken (where in Bishop Building's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 8.2 The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that Bishop Building shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.

**9. Measurement of Concreting Works**

- 9.1 At the completion of the Works the Client or the representative of the Client shall be in attendance and the Works shall then be duly measured. In the absence of either the Client or their representative Bishop Building shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the Works completed.

**10. Surplus Materials**

- 10.1 Unless otherwise stated elsewhere in this contract:
- (a) demolished Materials remain the Client's property; and
  - (b) Materials which Bishop Building brings to the site which are surplus remain the property of Bishop Building.

**11. Access**

- 11.1 The Client shall ensure that Bishop Building has clear and free access to the work site at all times to enable them to undertake the Works. Bishop Building 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 Bishop Building.
- 11.2 The Client acknowledges and agrees that in the event Bishop Building require access, in order to undertake the Works (including, but not limited to, providing crane or other lifting equipment access to the site), to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Works. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by Bishop Building in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

**12. Underground Locations**

- 12.1 Prior to Bishop Building commencing any work the Client must advise Bishop Building of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst Bishop Building will take all care to avoid damage to any underground services the Client agrees to indemnify Bishop Building 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 12.1.

**13. Compliance with Laws**

- 13.1 The Client and Bishop Building shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 The Client 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.

**14. Title**

- 14.1 Bishop Building and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Bishop Building all amounts owing to Bishop Building; and
  - (b) the Client has met all of its other obligations to Bishop Building.
- 14.2 Receipt by Bishop Building 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.
- 14.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Bishop Building on request.
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Bishop Building and must pay to Bishop Building the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
  - (c) the production of these terms and conditions by Bishop Building shall be sufficient evidence of Bishop Building's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Bishop Building to make further enquiries.
  - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Bishop Building and must pay or deliver the proceeds to Bishop Building on demand.
  - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Bishop Building and must sell, dispose of or return the resulting product to Bishop Building as it so directs.
  - (f) unless the Materials have become fixtures the Client irrevocably authorises Bishop Building to enter any premises where Bishop Building believes the Materials are kept and recover possession of the Materials.

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- (g) Bishop Building may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Bishop Building.
- (i) Bishop Building may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

### 15. Personal Property Securities Act 1999 (“PPSA”)

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to Bishop Building for Works – that have previously been supplied and that will be supplied in the future by Bishop Building to the Client.
- 15.2 The Client undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Bishop Building may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Bishop Building for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Bishop Building; and
  - (d) immediately advise Bishop Building of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.3 Bishop Building and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by Bishop Building, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by Bishop Building under clauses 15.1 to 15.5.

### 16. Security and Charge

- 16.1 In consideration of Bishop Building agreeing to supply the Materials, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies Bishop Building from and against all Bishop Building’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Bishop Building’s rights under this clause.
- 16.3 The Client irrevocably appoints Bishop Building and each director of Bishop Building as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client’s behalf.

### 17. Client’s Disclaimer

- 17.1 The Client hereby disclaims any right to rescind, or cancel any contract with Bishop Building or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Bishop Building and the Client acknowledges that the Works are bought relying solely upon the Client’s skill and judgment.

### 18. Defects In Materials

- 18.1 The Client shall inspect the Materials on delivery and shall within thirty (30) days of delivery (time being of the essence) notify Bishop Building of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Bishop Building an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Bishop Building has agreed in writing that the Client is entitled to reject, Bishop Building’s liability is limited to either (at Bishop Building’s discretion) replacing the Materials or repairing the Materials.
- 18.2 Materials will not be accepted for return other than in accordance with 18.1 above.

### 19. Warranty

- 19.1 For Materials not manufactured by Bishop Building, the warranty shall be the current warranty provided by the manufacturer of the Materials. Bishop Building shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

### 20. Consumer Guarantees Act 1993

- 20.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Bishop Building to the Client.

### 21. Default and Consequences of Default

- 21.1 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 Bishop Building’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes Bishop Building any money the Client shall indemnify Bishop Building from and against all costs and disbursements incurred by Bishop Building in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Bishop Building’s collection agency costs, and bank dishonour fees).

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- 21.3 Further to any other rights or remedies Bishop Building may have under this contract, if a Client has made payment to Bishop Building, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Bishop Building under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 21.4 Without prejudice to any other remedies Bishop Building may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Bishop Building may suspend or terminate the supply of Works to the Client. Bishop Building will not be liable to the Client for any loss or damage the Client suffers because Bishop Building has exercised its rights under this clause.
- 21.5 Without prejudice to Bishop Building's other remedies at law Bishop Building shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Bishop Building shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Bishop Building becomes overdue, or in Bishop Building's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 22. Cancellation

- 22.1 Bishop Building may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Bishop Building shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Bishop Building for Works already performed. Bishop Building shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Bishop Building as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 23. Privacy Act 1993

- 23.1 The Client authorises Bishop Building or Bishop Building's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by Bishop Building from the Client directly or obtained by Bishop Building from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.2 Where the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3 The Client shall have the right to request Bishop Building for a copy of the information about the Client retained by Bishop Building and the right to request Bishop Building to correct any incorrect information about the Client held by Bishop Building.

### 24. Unpaid Seller's Rights

- 24.1 Where the Client has left any item with Bishop Building for repair, modification, exchange or for Bishop Building to perform any other service in relation to the item and Bishop Building has not received or been tendered the whole of any monies owing to it by the Client, Bishop Building shall have, until all monies owing to Bishop Building are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 24.2 The lien of Bishop Building shall continue despite the commencement of proceedings, or judgment for any monies owing to Bishop Building having been obtained against the Client.

### 25. Dispute Resolution

- 25.1 All disputes and differences between the Client and Bishop Building touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

### 26. Construction Contracts Act 2002

- 26.1 In the event that the Client is a residential occupier as defined by the Construction Contracts Act 2002 the Client hereby expressly acknowledges that:
- (a) Bishop Building has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Bishop Building by a particular date; and
  - (iv) Bishop Building has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.

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- (b) if Bishop Building suspends work it:
  - (i) is not in breach of contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
  - (iii) is entitled to an extension of time to complete the contract; and
  - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if Bishop Building exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to Bishop Building under the Contractual Remedies Act 1979; or
  - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Bishop Building suspending work under this provision.

### 27. General

- 27.1 The failure by Bishop Building to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Bishop Building'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.
- 27.2 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 Tauranga, New Zealand.
- 27.3 Bishop Building shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Bishop Building of these terms and conditions (alternatively Bishop Building's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Bishop Building nor to withhold payment of any invoice because part of that invoice is in dispute.
- 27.5 Bishop Building may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 27.6 The Client agrees that Bishop Building may amend these terms and conditions at any time. If Bishop Building makes a change to these terms and conditions, then that change will take effect from the date on which Bishop Building notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Bishop Building to provide any Works to the Client.
- 27.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.