

# EIS Group Limited – Terms & Conditions of Trade

<p><b>1. Definitions</b></p> <p>1.1 <b>"Agreement"</b> means the entire contractual agreement between the parties.</p> <p>1.2 <b>"Client"</b> means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting EIS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally;</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.3 <b>"Confidential Information"</b> means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, either party's intellectual property, operational or technical information, know-how, trade secrets, financial and commercial affairs, contracts, client information, pricing details and other commercially valuable or sensitive information of whatever description which a party regards as confidential, proprietary or of a commercially or personally sensitive nature. It excludes information which:</p> <p>(a) is lawfully in the public domain before its disclosure, or enters the public domain afterwards through an authorised disclosure;</p> <p>(b) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis;</p> <p>(c) is rightfully known by the receiving party before disclosure to it.</p> <p>1.4 <b>"Cookies"</b> 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 Client does not wish to allow Cookies to operate in the background when using EIS' website, then the Client 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.</p> <p>1.5 <b>"EIS"</b> means EIS Group Limited, its successors and assigns.</p> <p>1.6 <b>"Goods"</b> means all Goods (including materials and products) or Services (including consultation, manufacturing and/or installation services) supplied by EIS to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.7 <b>"Intended Use"</b> 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.</p> <p>1.8 <b>"Non-Conforming Building Product"</b> means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:</p> <p>(a) the product is not, or will not be, safe; or</p> <p>(b) does not, or will not, comply with the relevant regulatory provisions; or</p> <p>(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.</p> <p>1.9 <b>"Price"</b> means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between EIS and the Client in accordance with clause 7.5 below.</p> <p>1.10 <b>"Proposal"</b> means the letters or other documents prepared by EIS and submitted to the Client to describe the scope of Services to be provided, the personnel and equipment proposed to be utilized, and the amount or method of calculation of the Price and reimbursable expenses.</p> <p><b>2. Acceptance</b></p> <p>2.1 The parties acknowledge and agree that:</p> <p>(a) they have read and understood the terms and conditions contained in this Agreement; and</p> <p>(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.</p> <p>2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with EIS and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, EIS reserves the right to refuse delivery.</p> <p>2.6 Dimensions and specifications contained or referred to in any agreement or in any publications maintained or issued by EIS are estimates only. Unless otherwise expressly agreed in writing by EIS, it is not a condition of any agreement that the Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.</p> <p>2.7 None of EIS' agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of EIS in writing nor is EIS bound by any such unauthorised statements.</p> <p>2.8 The Client accepts and acknowledges that EIS reserves the right to appoint at EIS' discretion a project manager or managers to oversee the Services up to and including completion, the Client accepts that this party may be subject to change without notice, during the course of the Agreement.</p> <p>2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Agreement and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p><b>3. Authorised Representatives</b></p> <p>3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to EIS as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Goods or Services have been delivered, or the Client otherwise notifies EIS in writing that said person is no longer the Client's duly authorised representative).</p> <p>3.2 In the event that the Client's duly authorised representative, as per clause 3.1, is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise EIS in writing of the parameters of the limited authority granted to their representative.</p> <p>3.3 The Client specifically acknowledges and accepts that they will be solely liable to EIS for all additional costs incurred by EIS (including EIS's profit margin) in providing any Goods, Services or variations thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).</p> <p><b>4. Errors and Omissions</b></p> <p>4.1 The Client acknowledges and accepts that EIS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by EIS in the formation and/or administration of this Agreement; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by EIS in respect of the Services.</p> <p>4.2 If such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of EIS; the Client:</p> <p>(a) shall not be entitled to treat this Agreement as repudiated nor render it invalid; but</p> <p>(b) shall not be responsible for any additional costs incurred by EIS arising from the error or omission.</p> <p><b>5. Change in Control</b></p> <p>5.1 The Client shall give EIS 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 and contact phone or fax numbers, change of trustees or business practice). The Client shall be liable for any loss incurred by EIS as a result of the Client's failure to comply with this clause.</p> <p><b>6. Credit Card Information</b></p> <p>6.1 EIS will:</p>	<p>(a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by EIS;</p> <p>(b) not disclose the Client's credit card details to any third party; and</p> <p>(c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 23) or where required by law.</p> <p>The Client expressly agrees that, if pursuant to this Agreement, there are any unpaid charges, other amounts due and outstanding by the Client, EIS is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Agreement.</p> <p><b>Price and Payment</b></p> <p>At EIS' sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by EIS to the Client; or</p> <p>(b) EIS' estimated Price (subject to clause 7.2). No allowances shall be made for site preparation unless specified in the estimate. The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than 10% will be subject to Client approval before proceeding with the Services; or</p> <p>(c) EIS' 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.</p> <p>EIS reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans, specifications or additional commissioning) is requested; or</p> <p>(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 and/or crawl spaces, as a result of delays from third party suppliers, existing state of electrical components or switchboard, non-compliant wiring, availability of machinery, safety considerations including the discovery of asbestos or synthetic mineral fibres, prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services; or</p> <p>(d) in the event of increases to EIS in the costs of supply and/or production of the Goods (including fluctuations in currency exchange rates, etc.), and/or delivery, due to circumstances beyond the reasonable control of EIS.</p> <p>7.3 Variations will be charged for on the basis of EIS' quotation, and will be detailed in writing, and shown as variations on EIS' invoice. The Client shall be required to respond to any variation submitted by EIS within ten (10) working days. Failure to do so will entitle EIS 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.</p> <p>At EIS' sole discretion a reasonable non-refundable deposit may be required.</p> <p>7.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by EIS, which may be:</p> <p>(a) on or before delivery of the Goods;</p> <p>(b) by way of instalments/progress payments in accordance with EIS' payment schedule;</p> <p>(c) for certain approved Clients, due twenty (20) days following the end of the month in which a notification is posted to the Client's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EIS.</p> <p>7.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and EIS.</p> <p>7.6 EIS may in its discretion allocate any payment received from the Client towards any invoice that EIS determines and may do so at the time of receipt or at any time afterwards. On any default by the Client EIS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by EIS, payment will be deemed to be allocated in such manner as preserves the maximum value of EIS' Purchase Money Security Interest (as defined in the PPSA) in the Goods.</p> <p>7.7 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 EIS nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to EIS an amount equal to any GST EIS must pay for any supply by EIS under this or any other contract for the sale of the Goods. 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.</p> <p><b>Provision of the Services</b></p> <p>8.1 Subject to clause 8.2 it is EIS' responsibility to ensure that the Services start as soon as it is reasonably possible.</p> <p>8.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that EIS claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond EIS' control, including, but not limited to, any failure by the Client to:</p> <p>(a) make a selection; or</p> <p>(b) have the site ready for the Services; or</p> <p>(c) notify EIS that the site is ready.</p> <p>8.3 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods at EIS' address; or</p> <p>(b) EIS (or EIS' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.</p> <p>The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.</p> <p>The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery of the Goods as arranged then EIS shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>8.4 EIS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Any time specified by EIS for provision of the Services is an estimate only and EIS will not be liable for any loss or damage incurred by the Client as a result of late provision. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that EIS is unable to provide the Services as agreed solely due to any action or inaction of the Client then EIS shall be entitled to charge a reasonable fee for re-providing the Goods or Services at a later time and date (including any additional time accrued due to unavailability of plant for EIS to perform duties required under this Agreement, which will be charged at EIS' normal hourly rates).</p> <p><b>Free Issue Equipment</b></p> <p>9.1 Any equipment to be supplied to EIS for incorporation in the Services by EIS ("Free Issue Equipment") is accepted only under the following conditions:</p> <p>(a) EIS will not be responsible for delays caused by late delivery, or delivery in an incomplete or damaged form;</p> <p>(b) EIS will not be responsible for process performance issues relating to Free Issue Equipment, or where said Free Issue Equipment impacts on the performance of products supplied by EIS;</p> <p>(c) EIS will not be responsible for compatibility issues relating to the Free Issue Equipment;</p> <p>(d) EIS will not be responsible for any and all other problems associated with the Free Issue Equipment; and</p> <p>(e) any time spent dealing with issues relating to the Free Issue Equipment, will be charged at EIS' normal hourly rates under clause 7.2.</p> <p><b>Risk</b></p> <p>10.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p>	<p>10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, EIS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by EIS is sufficient evidence of EIS' rights to receive the insurance proceeds without the need for any person dealing with EIS to make further enquiries.</p> <p>10.3 If the Client requests EIS to leave Goods outside EIS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.</p> <p>10.4 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish. EIS will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.</p> <p>10.5 The Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and EIS shall not be liable for any claims, demands, losses, damages, costs and expenses whatsoever caused or arising should the premises or equipment be unable to accommodate the installation.</p> <p>10.6 Subject to clause 18 EIS shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.</p> <p>10.7 The Client acknowledges that EIS is only responsible for parts that are replaced/supplied by EIS and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Client agrees to indemnify EIS against any loss or damage to the Goods, or caused thereby, or any part thereof however arising.</p> <p><b>11. Site Access and Condition</b></p> <p>11.1 The Client shall ensure that EIS has clear and free access to the site at all times to enable them to undertake the Services (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Goods). EIS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of EIS.</p> <p>11.2 <b>Site Inductions</b></p> <p>(a) in the event the Client requires an employee or sub-contractor of EIS to undertake a site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay EIS' standard (and/or overtime, if applicable) hourly labour rate; or</p> <p>(b) where EIS is in control of the site, the Client and/or the Client's third-party contractors must initially carry out EIS' Health &amp; Safety induction course before access to the site will be granted. Inspection of the site during the course of the Services will be by <b>appointment only</b> and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by EIS.</p> <p><b>12. Underground Locations</b></p> <p>12.1 Prior to EIS commencing any work the Client must advise EIS of the precise location of all underground services on the site and clearly mark the same. The underground mains and 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 the site.</p> <p>12.2 Whilst EIS will take all care to avoid damage to any underground services the Client agrees to indemnify EIS in respect of all and any liability claims, losses, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.</p> <p><b>13. Compliance and Consents</b></p> <p>13.1 The Client and EIS 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.</p> <p>13.2 EIS has Tertiary Level ACC Workplace Safety Management Practices in effect. The principles and practices of safety and management are strictly adhered to by EIS; a copy of EIS' Health, Safety, environmental and quality documentation is available upon request.</p> <p>13.3 Both parties acknowledge and agree:</p> <p>(a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and products to be supplied during the course of the Services; and</p> <p>(b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.</p> <p>13.4 Where the Client has supplied products for EIS to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in EIS' opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then EIS shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such changes will be invoiced in accordance with clause 7.2.</p> <p>13.5 The Client shall obtain (at the expense of the Client) all licenses, building consents or permits from local council or government bodies for the Services that may be required for the installation of the Goods.</p> <p>13.6 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.</p> <p>13.7 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by EIS, then EIS shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.</p> <p>13.8 Any live works or works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being "Safe Working in Low Voltage Electrical Installations, relevant Statutory Acts and Work Place Regulations". EIS' live works procedures are designed to eliminate risk of injury to EIS' employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be invoiced in accordance with clause 7.2.</p> <p>13.9 Notwithstanding clause 13.1 and pursuant to the Health &amp; Safety at Work Act 2015 (the "HSW Act"), EIS agrees at all times to 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 site or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.</p> <p><b>14. Title</b></p> <p>14.1 EIS and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid EIS all amounts owing to EIS; and</p> <p>(b) the Client has met all of its other obligations to EIS.</p> <p>14.2 Receipt by EIS 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.</p> <p>14.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 14.1:</p> <p>(a) the Client is only a bailee of the Goods and must return the Goods to EIS on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for EIS and must pay to EIS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for EIS and must pay or deliver the proceeds to EIS on demand;</p>
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- (d) the Client should not convert or process the Goods 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 EIS and must sell, dispose of or return the resulting product to EIS as it so directs;
- (e) the Client irrevocably authorises EIS to enter any premises where EIS believes the Goods are kept and recover possession of the Goods;
- (f) EIS may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client 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 EIS; and
- (h) EIS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods 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 Goods that have previously been supplied and that will be supplied in the future by EIS to the Client, and the proceeds from such Goods as listed by EIS to the Client in invoices rendered from time to time.
- 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 EIS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, EIS 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, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of EIS; and
- (d) immediately advise EIS 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.
- 15.3 Unless otherwise agreed to in writing by EIS, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.4 The Client shall unconditionally ratify any actions taken by EIS under clauses 15.1 to 15.3.
- 15.5 Subject to any express provisions to the contrary (including those contained in clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of EIS agreeing to supply the Goods, 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, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to a 209 of the Land Transfer Act 2017.
- 16.2 The Client indemnifies EIS from and against all EIS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EIS' rights under this clause.
- 16.3 The Client irrevocably appoints EIS and each director of EIS as the Client's true and lawful attorneys 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. Defects**
- 17.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify EIS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford EIS an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which EIS has agreed in writing that the Client is entitled to reject, EIS' liability is limited to either (at EIS' discretion) replacing the Goods or repairing the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) EIS has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Client's cost within ten (10) days of the Delivery date; and
- (c) EIS 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.
- 17.3 If EIS accepts that the Client is entitled to reject the Goods following their return pursuant to clause 17.2(b) EIS will reimburse the Client's actual and reasonable costs of return Delivery.
- 17.4 Subject to clause 17.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 18. Warranty**
- 18.1 Subject to the conditions of warranty set out in clause 18.2 EIS warrants that if any defect in any workmanship provided by EIS becomes apparent and is reported to EIS within twelve (12) months of the date of Delivery (time being of the essence) then EIS will either (at EIS' sole discretion) replace or remedy the defect.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Goods or serviced item; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by EIS; 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 EIS shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without EIS' consent
- (c) in respect of all claims EIS shall not be liable to compensate the Client for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Client's claim.
- 18.3 For Goods not manufactured by EIS, the warranty shall be the current warranty provided by the manufacturer of the Goods. EIS 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.
- 19. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 19.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by EIS to the Client.
- 19.2 EIS agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").
- 20. Intellectual Property**
- 20.1 If during the course of providing the Services, EIS designs, develops, discovers, or supplies the Client with any products, information, ideas, documentation (including designs, plans, reports, proposals, designs, programs, strategies, plans, 24.1 specifications and other goods and aids, etc.), new concepts, products or processes ("Intellectual Property") which are capable of being patented, then copyright in that Intellectual Property shall remain the property of EIS, and the Client must not reproduce, copy or use it in any manner without the prior written permission of EIS. Upon completion of this Agreement, the Client must return to EIS all copies of any Intellectual Property (whether in written, electronic or other form), except as otherwise agreed with EIS. No copies of such Intellectual Property are to be retained, used or passed on to any third party by the Client.
- The Client warrants that all designs, specifications or instructions given to EIS will not cause EIS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify EIS against any action taken by a third party against EIS in respect of any such infringement.
- The Client agrees that EIS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which EIS has created for the Client.
- Each party:
- (a) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this Agreement or any agreement between the parties, or except where disclosure is otherwise expressly permitted by the provisions of this Agreement or such agreement.
- 21. Default and Consequences of Default**
- 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 EIS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- If the Client owes EIS any money the Client shall indemnify EIS from and against all costs and disbursements incurred by EIS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EIS' collection agency costs, and bank dishonour fees).
- Further to any other rights or remedies EIS may have under this Agreement, if a Client has made payment to EIS, 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 EIS 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.
- Without prejudice to EIS' other remedies at law EIS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EIS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EIS becomes overdue, or in EIS' opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by EIS;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) 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**
- Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- If EIS, due to reasons beyond EIS' reasonable control, is unable to deliver any Goods and/or Services to the Client, EIS may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice EIS shall repay to the Client any money paid by the Client for the Goods and/or Services. EIS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- The Client may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Agreement.
- Cancellation of orders for Goods 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 Policy**
- All emails, documents, images or other recorded information held or used by EIS is "Personal Information" as defined and referred to in clause 23.3 and therefore considered confidential. EIS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. EIS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by EIS that may result in serious harm to the Client, EIS will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- Notwithstanding clause 23.1, privacy limitations will extend to EIS in respect of Cookies where the Client utilises EIS' website to make enquiries. EIS 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 Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to EIS when EIS sends an email to the Client, so EIS may collect and review that information ("collectively Personal Information")
- If the Client consents to EIS' use of Cookies on EIS' website and later wishes to withdraw that consent, the Client may manage and control EIS' privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Client authorises EIS or EIS' agent to:
- (a) access, collect, retain and use any information about the Client;
- (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 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 EIS from the Client directly or obtained by EIS 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.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.5 The Client shall have the right to request (by e-mail) from EIS, a copy of the Personal Information about the Client retained by EIS and the right to request that EIS correct any incorrect Personal Information.
- 23.6 EIS will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 23.7 The Client can make a privacy complaint by contacting EIS via e-mail. EIS 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- Insurance**
- EIS undertakes to act in all professional matters as a faithful consultant to the Client, whose interests will be watched over with skill and care. Notwithstanding, EIS shall only be liable to the Client for the consequences of any negligent act, omission or
- statement of EIS, and then only to the extent and limitations referred to herein, and the quotation, proposal or any other documentation pertaining to this Agreement. EIS shall take out and maintain insurance in respect of any potential liability, loss or damage that may arise relating to the performance of the Services under this Agreement. EIS will also cover Professional Indemnity for consultancy, project management, and project engineering to the amount of NZD \$5,000,000.00. Subject to the CGA, the liability of EIS and the Client under this Agreement shall be limited to the Price.
- 25. Suspension of Services**
- 25.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) EIS 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 in accordance with clause 7.5 and/or any subsequent amendments or new legislation 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 EIS by a particular date; and
- (iv) EIS has given written notice to the Client of its intention to suspend the carrying out of work under the construction Contract.
- (b) If EIS 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 Agreement; and
- (iv) keeps its rights under the Agreement including the right to terminate the Agreement; 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 EIS exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to EIS under the Contract and Commercial Law Act 2017; 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 EIS suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes EIS from continuing the Services or performing or complying with EIS's obligations under this Agreement, then without prejudice to EIS's other rights and remedies, EIS may suspend the Services immediately after serving on the Client 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 EIS as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 25.2 If pursuant to any right conferred by this Agreement, EIS suspends the Services and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, EIS shall be entitled to terminate the Agreement, in accordance with clause 22.
- 26. Service of Notices**
- 26.1 Any written notice given under this Agreement shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Agreement;
- (c) by sending it by registered post to the address of the other party as stated in this Agreement;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (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.
- 27. Trusts**
- 27.1 If the Client at any time upon or subsequent to entering into the Agreement is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not EIS may have notice of the Trust, the Client covenants with EIS as follows:
- (a) the Agreement extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client 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 Client will not after the term of the Agreement without consent in writing of EIS (EIS will not unreasonably withhold consent), cause, permit, or suffer to happen any any of the following events:
- (i) the removal, replacement or retirement of the Client 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 fund or trust property.
- 28. General**
- 28.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s). 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 Invercargill, New Zealand.
- 28.2 EIS may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Client's consent provided the assignment does not cause detriment to the Client.
- 28.3 The Client cannot licence or assign without the written approval of EIS.
- 28.4 EIS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of EIS' sub-contractors without the authority of EIS.
- 28.5 The Client agrees that EIS may amend their general terms and conditions for subsequent future Agreements with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for EIS to provide Goods and/or Services to the Client.
- 28.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, natural or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, 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 Client to make any payment due to EIS, following cessation of a Force Majeure.
- 28.7 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.