

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Supplier,' 'we', or 'us' means Lamiform 2006 Limited trading as Lamiform (our successors and assigns) or any person acting with the authority of Lamiform 2006 Limited.
- 1.3. 'Client,' 'you', or 'your' means the Client purchasing Goods or Services from us or any person acting on your behalf (including authorised agents).
- 1.4. 'Services' means all Services provided to you, including any provision of Goods as specified in any documentation or otherwise provided under this Agreement (and where the context permits, the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5. 'Goods' means all Goods required to complete the Services.
- 1.6. 'Worksite' means the address or location you nominate for us to provide the Goods or Services.
- 1.7. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.8. 'Agreement' means these terms and conditions, as may be amended from time to time (including our privacy policy and any orders, purchases, or schedules, as applicable).
- 1.9. 'Amounts Owing' means any amount you owe to us from time to time, including the Price, any of your liability under this Agreement, any interest payable, and any enforcement expenses we incur in seeking payment of any Amounts Owing.
- 1.10. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.11. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Goods or Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party before the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.12. 'Event of Default' means failure to comply with this Agreement (including your obligations in clause 6).
- 1.13. 'Insolvency Event' means an event of insolvency or bankruptcy, including:
 - (a) the appointment of an insolvency administrator, manager, receiver or liquidator;
 - (b) any action related to winding up or making a material arrangement in relation to creditors;
 - (c) applying for any type of protection against creditors;
 - (d) being unable to pay your debts as they fall due; or
 - (e) taking or suffering any similar or analogous action in any jurisdiction due to debt.
- 1.14. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.15. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.16. 'PPSA' means the Personal Property Securities Act 1999.
- 1.17. 'CCA' means the Construction Contracts Act 2002.
- 1.18. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.19. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.20. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. All orders are subject to our acceptance. We may (at our sole discretion) accept any order in whole or part by issuing an invoice for the applicable Services, delivering the Goods or Services or otherwise confirming the order in writing.
- 3.2. You acknowledge and accept that:
 - (a) the supply of Goods on credit may not take effect until you have completed a credit application with us and it has been approved with a credit limit established for the account;
 - (b) if the supply of Goods requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
 - (c) this Agreement may only be amended with our written consent and shall supersede any other document or agreement between the parties; and
 - (d) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation.
- 3.3. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not

- need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Goods or Services.
- 3.4. Your acceptance of this Agreement shall continue to all future orders, purchases, or schedules (as applicable). This Agreement will be or is deemed to be incorporated into and form part of each order, purchase, or schedule as if it were set out or implied therein in full.
 - 3.5. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided they have complied with sections in Part 4, subpart 3, and all other relevant sections in Part 4 of the CCLA.
 - 3.6. Once you have accepted the quote, you are not entitled to have any part of the Services carried out by any third party (unless we agree in writing).
 - 3.7. Any instructions we receive from you (either oral or in writing) for the provision of the Goods or Services shall be binding under this Agreement.

4. AUTHORISED AGENTS

- 4.1. We are not obligated to inquire about the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name or any other changes to your details (including changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. You acknowledge and accept that if you fail to comply with clause 5.1, you will breach this Agreement and shall be liable for any expense or loss of profit suffered (including any Related Company).

6. PRICE AND PAYMENT

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. Unless we agree otherwise in writing, the Price shall be:
 - (a) indicated in the invoices provided to you in respect of the Services;
 - (b) our estimated Price with the final Price being ascertained upon completion of the Services; or
 - (c) our quoted Price, which will be binding, subject to your acceptance of our quotation in writing within thirty (30) days and any variations under clause 8.
- 6.3. All requests for cutting from nominated slabs or areas must be relayed to us during the quoting stage.
- 6.4. The pricing of the Goods is subject to specific suppliers and the availability of the Goods when quoting. The final Price will be confirmed on slab selection and approval after the final site measurement. Where specific requests for joint locations are requested, additional charges may be applicable.
- 6.5. If the Price is not set out in quotations or other documentation, the Price for the relevant Goods or Services will be at our standard rate according to our current Price list or at a rate notified to you.
- 6.6. You agree to pay the Price by the due date we determine and advise to you (at our sole discretion), which may be:
 - (a) on delivery of the Goods or completion of the Services;
 - (b) by way of progress payments in accordance with our agreed progress payment schedule, and such progress payment claims may include the value of any authorised variations and the value of any Goods that have been delivered to the Worksite (whether installed or not);
 - (c) twenty (20) days following the end of the month in which a statement or invoice is sent to you; or
 - (d) seven (7) days following the date of any invoice sent to your email or postal address if there is no notice to the contrary.
- 6.7. We may submit payment claims under the CCA. A payment schedule must be provided to us within twenty (20) working days from receipt of our payment claim (and if you wish to dispute the amount of any payment claim, you must do so in accordance with Part 2, subpart 3 of the CCA).
- 6.8. At our sole discretion, we may allocate any payment from you towards any invoice that we determine and may do so at the time of receipt or any time afterwards. We may re-allocate any previously received and allocated payments if an Event of Default occurs. In the absence of any payment allocation, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests (as defined in the PPSA) in the Goods or Services.
- 6.9. We may require that you pay a fifty percent (50%) deposit with the order (to include the estimated costs of stone templating, fabrication, fitting and transport costs) or provide a guarantee as security for paying any Amounts Owing.
- 6.10. Where we pay any subcontractor's account on your behalf, you agree to reimburse us for the payment of the subcontractor's account within seven (7) days (unless otherwise agreed in writing).
- 6.11. We reserve the right to alter any price lists at any time. Any alterations to any Price list will be effective from the date we specify and apply to all orders or purchases we accept on or after that date.
- 6.12. Payment may be made by online banking or any other method we agree to in writing.
- 6.13. Payment in any form other than cash shall not be taken to be payment for the Amounts Owing, and all ownership rights of the Goods or Services remain with us

until that form of payment has been cleared and received in accordance with clause 19.1.

6.14. You shall not withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services are disputed, you agree that you will:

- (a) perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
- (b) provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.

6.15. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

7. CONSTRUCTION CONTRACTS (RETENTION MONEY) AMENDMENT ACT 2023

7.1. At the agreement of both parties, payment of the Price may be subject to a retainable amount, being a set amount or equal to a percentage of the Price, that becomes retention money under Part 1, section 18B(2) or section (6)(a) of the Construction Contracts (Retention Money) Amendment Act 2023 (CCRMA). Any retention money shall be trust property, held on trust for the agreed period following completion of the Services, during which all defects are to be remedied.

7.2. You acknowledge and agree to:

- (a) keep and use all retention money that applies to this Agreement in accordance with Part 1, section 18D of the CCRMA;
- (b) maintain accounting records of all retention money, including maintaining separate ledger records for each party and in relation to each construction contract for which money is held on trust;
- (c) report on retention money when requested and at least every three (3) months until the retention money trust ends; and
- (d) compensate us if any unallocated withdrawals or deposits occur and lead to a loss of any retention money held for us (if Part 1, section 18EA of the CCRMA applies).

8. VARIATIONS

8.1. The Price will be adjusted to reflect any extra cost or expense we incur due to any instruction received from you (or your authorised agent) or any action or inaction on your part.

8.2. We reserve the right to change the quoted Price if:

- (a) there is any change to the Services, including: (i) any information you provide is inaccurate; (ii) there is an increase or decrease in the quantity of the Services; (iii) you request any change to plans or specifications; (iv) there is a change in the character or quality of any Goods or the Services; (v) there are changes to the level, line, position, or dimensions of the Services; or (vi) there is any changes to the timing or sequencing of the Services;
- (b) additional Services are required due to: (i) the discovery of hidden or unidentifiable difficulties which are only discovered on the commencement of the Services; (ii) faults found upon disassembling the premises; (iii) poor weather conditions affecting the Services; (iv) limitations to accessing the Worksite (including if heavy machinery or trucks are unable to access the Worksite or if access issues require us to transport the Goods manually); (v) any incorrect measurements, plans or specifications you provide; (vi) health and safety considerations (including the discovery of asbestos); or (vii) any workmanship by a third party being of poor quality or incomplete which requires remedial Services; or
- (c) the cost of labour or Goods increases due to changes beyond our control, including: (i) economic factors such as inflation or supply shortages; (ii) any taxes imposed by any Regulator; (iii) overseas transactions that may increase due to variations in foreign currency rates of exchange; or (iv) or international freight and insurance charges.

8.3. We will provide written notice where a variation must be completed, and you may not arbitrarily withhold agreement to undertake that variation.

8.4. In addition to any Price adjustment for variations, we shall be entitled to charge for our time and expenses in assessing and pricing any variation (whether or not the variation goes ahead). You shall pay a reasonable additional fee based on our regular hourly rate and expenses (including where you request us to take any steps in preparation for a variation that, for any reason, does not proceed).

8.5. If a territorial authority requires a variation (including as a condition of granting or retaining a building consent or for any part of the Services to comply with the building code), both parties must communicate regarding the variation requirement. You agree to advise us whether you wish the variation to be carried out or whether an alternative arrangement can be made to avoid the need for the variation.

8.6. Where you request us to estimate the quantity of the Goods to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the estimate and the actual quantities provided, and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.

8.7. Without our written consent, you must not negotiate any variations directly with our subcontractors or merchants.

9. PROVISION OF SERVICES

9.1. Delivery of the Goods is taken to occur at the time that:

- (a) you or your nominated carrier takes possession of the Goods at our address; or
- (b) we or our nominated carrier deliver the Goods to your nominated address even if you are not present at the address.

9.2. If you purchase the Goods, a batch is selected, and any slab from this batch will be used for the Services. If you wish to select the exact slab, an additional appointment must be booked with the relevant supplier on a Business Day to select the Goods. We recommend that the Goods be viewed at the relevant

supplier's warehouse prior to confirming the colour selection. The Goods may have pits, fissures, cracks and fragmentation, which are not apparent in samples or previous installations. It is your responsibility to inspect the selected slab for all imperfections.

9.3. The benchtops are sealed with high-quality sealers during the fabrication process, and we will, at the time of installation, seal the Goods using a penetrating sealer (sealing provides partial but not absolute protection against staining). This sealer will need to be re-applied and maintained. Granite and marble should be treated or sealed with appropriate sealants at regular intervals for a long-lasting finish.

9.4. You must be available on-site at the time of measurement. If we cannot measure the entire scope of the Services due to you not being present, out-of-level cabinets, uninstalled cabinetry or no clear access to the premises (including muddy ground, unsafe ground or a hazardous walkway), the installation will be rescheduled. Any time we spend at the Worksite will be charged at our regular hourly rate.

9.5. If requested, you agree to attend all site visits, including measuring and installation, to sign off on the completed services. If you cannot be present at the arranged time, a suitable authorised agent must be designated on-site with the authority to approve all details discussed.

9.6. Installation of the Goods may require cutting, sanding or polishing at the Worksite. As such, we recommend that precautions be taken to protect any property that may be present at the Worksite. It is your responsibility to cover any property prior to the arrival of our Personnel (in accordance with clause 24). We also recommend keeping any plastic covers on the cabinetry until after the installation of the Goods.

9.7. We shall not be liable for any delay caused by:

- (a) variations or additional work;
- (b) any other delays for which you are responsible (including delays caused by third parties you have engaged);
- (c) a failure or delay on your part in complying with your obligations under this Agreement, including (i) paying the deposit; (ii) providing proof of finance or insurance; (iii) obtaining sufficient title; (iv) obtaining consents; (v) ensuring all necessary services are available at the Worksite; or (vi) providing us with access to the Worksite for the provision of the Services;
- (d) delays on the part of a consenting authority or other Regulator;
- (e) weather conditions affecting the Services completion;
- (f) suspensions of the Services by either party;
- (g) unforeseen health and safety requirements (such as the discovery of asbestos);
- (h) if subcontractors or Goods are unavailable;
- (i) any matter covered in clause 33.8 of this Agreement;
- (j) the poor condition of any existing structure (or any adjoining structure);
- (k) dispute resolution procedures invoked by either party in circumstances that, in our reasonable opinion, make it impracticable to proceed as otherwise planned or legal proceedings relating to the Services, commenced or threatened by a third party in circumstances that make it impractical for us to proceed; or
- (l) any other matter outside our reasonable control.

9.8. Where a delay has occurred, we shall be entitled to an extension of time to complete the Services and amend the expected completion date. We shall notify you of the amended scheduled completion date within a reasonable time after the delay becomes apparent.

9.9. If you engage any third party, and there is a delay in the completion of the third party's services, then that delay shall entitle us to amend the scheduled start or completion date.

9.10. The final decision on entry onto any site will be at our sole discretion, and failure to deliver any Goods will not be deemed a breach of this Agreement.

9.11. You accept that the supply of Goods for accepted orders may be subject to availability, and if, for any reason, Goods are not or cease to be available, we reserve the right to substitute comparable Goods or components of the Goods and vary the Price (in accordance with clause 8). In all such cases, we will notify you before any such substitution and reserve the right to place your order on hold until both parties agree to such changes.

9.12. If we cannot supply the Services as agreed solely due to your action or inaction, we shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date (including storage of the Goods, if applicable).

9.13. If we are required to provide the Services urgently, which may require us to work outside regular business hours (including working through lunch breaks, weekends or public holidays), we reserve the right to charge additional costs unless otherwise agreed between the parties.

9.14. Any time we specify for delivery of the Goods is an estimate only, and we will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery. You cannot cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery (or any delay in delivery due to any event beyond our control).

9.15. We may deliver the Goods in separate instalments, which will be invoiced and paid as individual transactions.

10. ERRORS AND OMISSIONS

10.1. You agree that we have no liability regarding any errors or omissions:

- (a) resulting from any unintentional mistake made in the formation or administration of this Agreement; or
- (b) contained in any documentation supplied to you regarding the Services.

10.2. If such an error or omission occurs that is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

10.3. You agree to notify us as soon as reasonably possible if you become aware of any error in the documentation provided regarding the Services.

11. DEFECTS

- 11.1. Any concerns with the installation quality or defects in the Goods should be presented to our Personnel at the time of installation. We will not be liable for any damage, stain, or cracking that occurs after the installation. If you do not notify us of any defects at the time of installation, the Goods or Services shall be presumed free of defects or other issues (subject to clause 16.1).
- 11.2. You shall allow us to inspect the Goods or Services to rectify any defect within forty-eight (48) hours from the delivery date if you believe the Goods or Services are defective and shall not engage any third party to rectify any defect before we inspect the Services. If you engage a third party to rectify any defect before allowing us to inspect the Services, then we are:
- entitled to cancel this Agreement, and all Amounts Owing shall become due;
 - not be obliged to provide any information or documentation or take any other action necessary to enable a code compliance certificate to be issued in respect of the Services; and
 - immediately discharged from any further obligation or liability regarding the Services.
- 11.3. Any period during which the Services has been suspended (under clause 28) as a consequence of your default shall not be counted when calculating a reasonable time for rectification of any defect, and any suspension shall not be construed as a permanent abandonment of the Services.
- 11.4. A defect does not include any fair wear and tear or damage resulting from your failure to follow our reasonable instructions.

12. RETURNS AND WARRANTIES

- 12.1. Return of the Goods will only be accepted (at our sole discretion) if:
- the Goods are returned to us within seven (7) days of the delivery date;
 - we have agreed in writing to accept the return of the Goods;
 - the Goods are returned in the condition they were received (in as new condition as reasonably possible).
- 12.2. You acknowledge and agree that:
- we will not accept the return of Goods that have not been stored or used correctly; and
 - the return of any Goods for credit may incur a restocking fee of twenty-five percent (25%) of the value of the Goods (and any additional freight costs we incur).
- 12.3. Subject to the warranty conditions in clause 12.4, our workmanship is warranted to the original purchaser for twelve (12) months from the installation date.
- 12.4. The conditions applicable to the warranty given under clause 12.3 are:
- the warranty shall not cover any defect or damage which may be caused by or arise through: (i) damage resulting from excessive weight load, impact or thermal shock; (ii) house settlement or movement; (iii) benchtop cracking or joint separation if the cabinetry support is insufficient; (iv) stone that has been moved from its original place of installation or modified in any way; (v) failure on your part to maintain the Goods properly; (vi) failure on your part to follow any instructions or guidelines we provide; (vii) any use of the Goods for any purpose other than the appropriate applications specified on the quote, invoice or any other documentation supplied to you; or (viii) the continued use of the Goods after any defect becomes apparent.
 - we shall not be liable to compensate you for any delay in remedying the defect or in properly assessing your claim; and
 - the warranty shall cease, and we shall in no circumstances be liable (including the warranty set out in clause 12.3) if the defect is repaired, altered or overhauled by any third party without our consent.
- 12.5. For Goods we do not manufacture, the warranty shall be the current warranty provided by the manufacturer, and we shall not be bound by any condition, representation, or warranty other than that which the manufacturer offers.
- 12.6. If the Goods have a defect covered under the manufacturer's warranty terms, any Services required to be completed will be at your cost (including the fabrication, removal, and installation of a new stone).

13. MEASUREMENT AND TEMPLATING

- 13.1. We will need the appliances on the Worksite to measure your cut-out locations and sizes accurately. The templates from the manufacturer will not be suitable as the details provided in the templates may not always be accurate. Where drawings require an adjustment or alteration after the final site measure has been completed, an additional cost may be applicable (in accordance with clause 8). All templates must be provided to us prior to the measurements taken at the Worksite. We can only estimate the Price if an accurate measure at the Worksite cannot be completed.
- 13.2. The Worksite for which the Services will be undertaken shall be prepared (including the cabinets installed, level and straight, the removal of existing benchtops, splashbacks, and preparation work and substrates fitted where required). It is your responsibility to ensure cabinets are in position, fixed and level with all appliances, such as sinks and hotplates onsite and, where applicable, the substrates screwed down from underneath. Where the Goods are being measured for an overlay over existing benchtops, you must ensure all tops are clear of any items and all appliances are present at the Worksite. Occasionally, existing benchtops become uneven over time and no longer level.
- 13.3. Where no site measure is required or included in the quote, or you wish to provide templates or drawings for manufacture, we are not liable for any amendments to final sizes, and all adjustments will be at an additional cost (for any reworking, Worksite visits or alterations to the templates or drawings). Where templates or drawings require an adjustment or alteration after the final templates or drawings have been provided, an additional cost to make such alterations will be applicable. You are to provide the Final drawings and manufacturing measurements with clear

and legible notations on the template and drawings. We will only install Goods if we have conducted an on-site measure of the Services, and you must approve the final slab-cutting layouts before production.

- 13.4. You accept that slight tolerances in both overhangs and thickness are to be expected due to the nature of the Goods. We may need to remove plaster to complete the installation of the Goods and will take reasonable care when conducting such operations.

14. PRIVACY ACT 2020

- 14.1. You authorise us (and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:
- exercising our rights or performing our obligations under this Agreement;
 - using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
 - monitoring your credit file with credit reporting agencies;
 - registering any Security Interest under this Agreement;
 - direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
 - the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 14.2. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information we hold. If you provide any personal information about a third party to us (including your Personnel), you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 14.3. If the Services are expected to involve sharing any data sets or other personal information, we will enter into a separate data protection agreement with you.
- 14.4. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

15. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- 15.1. Each party must keep confidential all Confidential Information, however, nothing in clause 15 prevents a party from disclosing Confidential Information:
- in the circumstances provided for in this Agreement;
 - if the disclosure is required by law or Regulator (but only to the extent necessary); or
 - if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.
- 15.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
- 15.3. You acknowledge and agree that we own:
- all right, title and interest in the Goods or Services at all times (including all intellectual property rights); and
 - any new Intellectual Property created as a result of or in connection with the provision of the Goods or Services.
- 15.4. If, notwithstanding clause 15.3, any Intellectual Property rights in any of the Goods or Services vests in you, you assign those Intellectual Property rights to us with effect from creation and agree to do all things we reasonably require to give effect to such assignment.
- 15.5. You agree that we may use at no expense any designs, drawings, plans, documents or photographs we create to market our Services or enter any competition. We will exclude your personal information, and you will not be able to be uniquely identified from the content we may use.
- 15.6. You warrant that our use of any designs, instructions, plans, specifications, or other technical information you provide will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor-client basis) that we may incur or suffer in the event of any such infringement.

16. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

- 16.1. Subject to clause 16.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under section 2 of the Consumer Guarantees Act 1993 (CGA)) under the CGA.
- 16.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
 - it is fair and reasonable for the parties to be bound by clause 16.2.
- 16.3. If you are acquiring the Goods or Services to resupply the Goods or Services in trade, you undertake that you will:
- contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and
 - procure that your clients and each person in the distribution chain thereafter contract out of the CGA to the maximum extent permitted by law in their contracts with clients.

- 16.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
 - it is fair and reasonable for the parties to be bound by clause 16.4.
- 16.5. You agree to indemnify us against any expenses or losses we incur due to your breach of clause 16.

17. CANCELLATION

- 17.1. Either party may cancel the Services provided under this Agreement if:
- any provision of this Agreement authorises cancellation in the circumstances;
 - either party have a right to cancel this Agreement under Part 2, subpart 3 of the CCLA (or any other statute); or
 - either party have permanently abandoned the Services before completion or has become incapable of complying with the obligations under this Agreement.
- 17.2. If either party cancels this Agreement, the cancellation shall take effect on the service of a notice on the other party (in accordance with clause 33.7) advising of the cancellation and the reason for the cancellation.
- 17.3. If you cancel this Agreement, you agree that we are entitled to:
- charge for any reasonable loss of profit; and
 - forfeit your deposit or any amount paid in advance and apply it to any Amounts Owing without prejudice to our other rights and remedies.
- 17.4. If either party exercises the right to cancel this Agreement:
- you agree to pay for the Goods delivered and the Services performed up to the date of cancellation. If the Amounts Owing for any Goods or Services is not apparent, it shall be calculated as if the relevant Goods and Services were provided as a variation (in accordance with clause 8); and
 - we shall provide possession of the Services to you (subject to all Amounts Owing being paid in full) and remove from the Worksite all Goods, tools, plant, equipment, and vehicles belonging to us (and our subcontractors).
- 17.5. We shall be entitled to cancel all or part of any order which remains unperformed, and all Amounts Owing shall become immediately due if:
- any Amounts Owing become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
 - an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors, or a liquidator or similar person is appointed.
- 17.6. If we commit any of the following acts of default and we have not remedied the default within twenty (20) Business Days of receiving written notice of the default, you may cancel this Agreement, including if we:
- become insolvent or bankrupt, convene a meeting with our creditors or a liquidator or similar person is appointed in respect of our assets; or
 - persistently or wilfully neglect our obligations under this Agreement.
- 17.7. Where you cancel the Agreement, the warranty provided may be withdrawn or rendered void (including the warranty in clause 12). To avoid rendering the warranty void, you must act in good faith and consult with us regarding the options for a resolution (including obtaining our prior written consent to the cancellation).
- 17.8. Orders to your specifications or non-stock-list items cannot be cancelled once production has commenced.
- 17.9. All provisions of this Agreement intended to continue in force beyond cancellation shall continue to bind the parties (in accordance with clause 33.12).
- 17.10. Subject to clause 17.9, on cancellation, each party shall be immediately discharged from any further obligation or liability regarding the Services and this Agreement (without prejudice to any right or remedy arising from either party's prior breach or unlawful act occurring before the cancellation).

18. EVENT OF DEFAULT

- 18.1. We may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount from the due date of payment until the date the outstanding amount is paid (and any interest shall compound monthly).
- 18.2. If an Event of Default occurs, you agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including any administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis).
- 18.3. Should you fail to pay any account, we may withhold the release of any producer statement, certification, or documentation relating to the Services provided until all Amounts Owing are paid in full.
- 18.4. You acknowledge and agree that if you are in default, we may, at our sole discretion:
- appoint a receiver in respect of your assets to take any action necessary to fulfil your obligations (including paying all Amounts Owing); and
 - charge you any associated costs to complete this process.

19. RETENTION OF TITLE

- 19.1. Ownership (including all right, title and interest) of the Goods and Services remains with us until:
- we have received all Amounts Owing; and
 - you have performed all of your obligations under this Agreement.
- 19.2. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Goods may be stored to remove any Goods. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses you incur, and you indemnify us against any liability we may have to any third party (including full legal costs on a solicitor-client basis), as a result of us exercising our rights under clause 19.2 (except where damages, costs or losses are due to our negligence or fraud).
- 19.3. If you resell or use any Goods before ownership of the Goods has passed to you (including combining or processing the Goods), the proceeds of such sale or use

will be received and held (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).

- 19.4. It is further agreed that:
- where possible, the Goods shall be kept separate and identifiable until we have received full payment and you have fulfilled all of your obligations under this Agreement; and
 - until ownership of the Goods passes to you, we may give written notice to return the Goods (or any accessories or components), and your rights to obtain ownership or any other interest in the Goods shall cease.
- 19.5. If any Goods are damaged where full payment has not been received, you agree that we are entitled to:
- receive all insurance proceeds paid for the Goods; and
 - deal directly with the insurance company to receive all insurance proceeds paid for the Goods we own (in accordance with clause 19.1).
- 19.6. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Goods or Services has not passed to you.

20. SECURITY AND LIEN

- 20.1. Subject to us providing any Goods or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien that you own either now or in the future and grant a security interest in all of your present and after-acquired property to secure the performance of all obligations under this Agreement (including full payment of all Amounts Owing).
- 20.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 20.1 of this Agreement (including signing any document on your behalf).
- 20.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 20 to secure the performance of your obligations under this Agreement.
- 20.4. It is fair and reasonable for the parties to be bound by clause 20.

21. PERSONAL PROPERTY SECURITIES ACT 1999

- 21.1. You acknowledge and agree that:
- this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Goods or the Services or the proceeds of such Goods or Services; and
 - the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired personal property) you may owe us from time to time and at any time.
- 21.2. You agree that you will sign any further documentation and provide any information that we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a perfected Security Interest in the Goods or Services or a Security Interest in the proceeds of the Goods or Services (a Security Interest taken in all collateral and any proceeds of any collateral).
- 21.3. To the extent permitted by law, we each contract out of:
- sections 114(1)(a), 133 and 134 of the PPSA; and
 - your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 21.4. You waive your right to receive a verification statement under Part 10, section 148 of the PPSA regarding any financing statement relating to a Security Interest.
- 21.5. Nothing in this Agreement is to be construed as an agreement that: (i) a Security Interest in Goods (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; (ii) a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; (iii) a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and (iv) a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 21.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 21.7. You must provide us with information and any associated documentation we request regarding your financial status from time to time.
- 21.8. If we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Goods or Services until you have provided such Security Interests.
- 21.9. You unconditionally ratify any actions taken under clause 21.

22. WORKSITE ACCESS

- 22.1. You acknowledge and agree that it is your responsibility to ensure:
- we have clear and free access to the Worksite to deliver the Goods or undertake the Services, and we shall not be liable for any loss or damage to the Worksite (including damage to pathways, driveways, concrete, and paved or grassed areas) unless due to our negligence; and
 - access is suitable to accept the weight of laden trucks or other heavy equipment as necessary.
- 22.2. Where access details have not been provided for unoccupied premises, you must be available to allow us access to the Worksite for installation. If you are not available, the installation may not take place.

23. EXCESS GOODS

- 23.1. We are not responsible for removing rubbish (including demolished materials) from the Worksite, and all waste we generate will be placed in a designated area you appoint (unless we have agreed to this under the scope of Services).
- 23.2. You acknowledge and accept that Goods we bring to the Worksite that are not used at the completion of the Services will remain our property. The quote is based on the Goods used for the Services, and any offcuts remain our property.

24. CLIENT'S RESPONSIBILITIES

- 24.1. It is your responsibility to:
- remove any furniture, furnishings or personal goods from the Worksite or vicinity of the Services and agree that we shall not be liable for any damage caused to those items through your failure to remove personal goods from the Worksite; and
 - provide us with adequate access to amenities (including available water, electricity, toilet and washing facilities in accordance with clause 9.1).
- 24.2. You warrant that you have sufficient funds available to honour your payment obligations and will, on request, provide us with evidence verifying such funds through a letter of credit from your banking institution.
- 24.3. If you are to supply any materials or services in connection with this Agreement (whether personally or by arrangement with a supplier or contractor), then our prior written consent is required, and you must ensure that the materials or services:
- meet the same standards as we are required to attain for the Goods and Services we are responsible for supplying under this Agreement; and
 - are delivered at such a time and in such a manner that we are not impeded from complying with our obligations under this Agreement.
- 24.4. You must proceed with the services you are supplying expeditiously and without delay and not unreasonably impede us from performing our obligations. You agree to promptly and comprehensively provide any information and make any decision we may reasonably request regarding any Services you are supplying.

25. INSURANCE AND RISK

- 25.1. You acknowledge and agree that:
- where we supply Materials only, all risks for the Goods shall immediately pass to you on delivery, and you must insure the Goods on or before delivery. The delivery of the Goods shall be deemed to have taken place immediately at the time that either: (i) you (or your nominated carrier) take possession of the Goods at our address; or (ii) we (or our nominated carrier) deliver the Goods to your nominated delivery address (even if you are not present at the address); or
 - if we are to supply and install the Goods, we shall maintain an insurance policy for the Services until completion, at which point all risks for the Services shall immediately pass to you.
- 25.2. Due to variations in colour, grain, quality, strength, structure, shading, veining, porosity and texture of natural stones (such as marble, granite, limestone, travertine and reconstituted (engineered) stones such as porcelain and ceramics), no warranty, condition or guarantee is given that any Goods shall correspond in colour, grain, quality, strength, structure, shading, veining, porosity and texture with any sample, display or any previous Goods sold or displayed. We accept no responsibility for reasonable variations between the samples provided or shown and the actual slabs acquired, and we cannot guarantee the colouring or character of the Goods delivered and fitted will be an exact match to any sample offered. The samples provided are indicative only, and naturally occurring variations in appearance caused by artificial or natural lighting are your responsibility to consider.
- 25.3. Vein matching is always our highest concern, however, due to slab sizes and benchtop configurations, this is not always possible. As such, we take no responsibility if the veining of the Goods is not matched if this is not practical in the circumstances.
- 25.4. Our Personnel are extremely careful when handling the goods. However, no responsibility can be taken for damage to paint or plaster near the installation of the Goods (unless due to our negligence).
- 25.5. All care will be taken whilst installing the Goods. However, it is your responsibility to ensure that the floors are protected from the risk of damage by having sufficient floor covering. We will take all reasonable precautions to minimise the creation of dust. We do not accept any responsibility for property on the premises that is damaged due to dust created when the cutting of marble, granite, or reconstituted stone is done. You acknowledge that it is your responsibility to cover all floors and to remove any items that may be damaged by dust in the vicinity of the Services.
- 25.6. Seams in natural stone and engineered stone may vary due to the nature of the material. If you want to nominate the joint size or locations, this must be discussed and finalised at the Worksite measurement. You agree that the joint size or location is subject to change as per our Personnel's recommendations and may exceed the intended size depending on the circumstances. All joints will be sealed with as close a colour match and fit as possible, and we reserve the right to add joints to the Goods where necessary.
- 25.7. Walls are rarely straight, so natural gaps between the wall and the benchtop may occur. We take no responsibility for any gaps caused by walls not being straight.
- 25.8. When selecting the placement of the benchtop, we will endeavour to accommodate any requests you make. However, there is no guarantee that we will achieve perfect placement due to unforeseen issues in the Goods, including cracks, breakages, and fissures.
- 25.9. Granite and marble should be treated regularly for a long-lasting finish. We provide a comprehensive guide on recommended cleaning, polishing, and sealing practices and products.

- 25.10. We are not responsible for any changes in the physical appearance of the Goods after they are installed and accepted in good condition (including any stains, fissures, cracks, or breakage that may occur).
- 25.11. Care must be taken to ensure any spill liquids are mopped up immediately (including hot oil, lemon juice, detergents, alcohol and acidic or alkaline substances), as Goods made from stone are not impervious to marking and staining. We recommend warm water and a mild detergent or neutral cleaner for cleaning natural stones. If any other product is used and causes staining or discolouration, we will not be liable for damage caused to the Goods.
- 25.12. Some flexing can occur on unsupported joins, which can result in them opening, and repairs may be necessary. This can be exasperated by standing on the Goods surfaces, which should always be avoided.
- 25.13. Where vein matching is requested, we will cut to the best of the material availability, with the final selections being your responsibility.
- 25.14. Cracks in the Goods are rare and can result from moving house foundations, cabinetry, land subsidence, dropping heavy objects on the Goods or standing on the benchtop. In the unlikely event cracks or chips occur during the cutting, fabricating and installing process, we will ensure to repair these to the best of our ability and are not obliged to provide any compensation or discount if this occurs as these risks are inherent with the Goods.
- 25.15. Any advice, recommendation or information we provide in relation to Goods or Services we supply is given in good faith, is based on our knowledge and experience and shall be accepted without liability.
- 25.16. You accept that we are only responsible for the Goods or Services we provide or replace. We do not accept any responsibility for previous Services carried out by any third party or for any loss or damage to the Goods or Services that any other third party causes after the completion of the Services.
- 25.17. We shall, upon installation, ensure that all Goods are to be installed in a manner that is fully compliant with all industry standards and regulations. If, for any reason, you expressly request the Goods to be installed in any way that goes against our recommendations or falls outside of industry standards:
- a request detailing that requirement must be made in writing; and
 - we offer no warranty regarding the Goods or the installation method requested.
- 25.18. You warrant that any structures to which the Goods are to be affixed can withstand the installation of the Goods and that any plumbing, gas or drainage connections are of suitable capacity to handle the Goods once installed. If, for any reason, we, or our employees, reasonably form the opinion that your premises are not safe for the installation of the Goods to proceed, then we shall be entitled to delay the installation of the Goods until we are satisfied that it is safe to proceed. We may, at our sole discretion, agree to bring the premises up to a standard suitable for the installation to proceed, but all additional Services required shall be treated as a variation (in accordance with clause 8).
- 25.19. You acknowledge that you must ensure safe removal of asbestos or any other toxic substances are discovered at the Worksite. You further agree to indemnify us against any costs incurred due to such discovery. Under no circumstances will we handle removing any asbestos product unless we agree in writing.
- 25.20. Should you request that we leave Goods outside our premises for collection or deliver them to an unattended location, you agree that those Goods shall be left at your sole risk.

26. LAND SUBSIDENCE AND DEFECTIVE EARTHWORKS

- 26.1. You acknowledge and agree that we are not liable for any:
- damage to the Services caused by the subsidence of the Worksite (including any partial subsidence) or additional costs resulting from the absence of information on any foundation, defects or difficulties that were not discovered by a reasonable inspection of the Worksite;
 - deterioration to the Services or the Worksite caused by or resulting from the inadequacy or negligent application of earth fill (or removal) unless such damage or deterioration may be adequately attributable to our negligence.
- 26.2. You agree that where earthmoving or excavation work has been provided by a third party (you have engaged) and such work is found to be defective or not up to standard (including depth or dimensions), we reserve the right to charge a variation to remedy such work (in accordance with clause 8).

27. HEALTH AND SAFETY AT WORK ACT 2015

- 27.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act and all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 27.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 27.3. Each party must consult, cooperate and coordinate activities with all other persons with a health and safety duty in relation to the same matter in providing the Goods or Services (including in connection with the delivery of the Goods or Services).
- 27.4. If a Worksite does not comply with industry standards regarding safety as we determine, our Personnel, without warning, may leave the Worksite until all safety concerns are addressed and resolved.

28. PLANS AND SPECIFICATIONS

- 28.1. Where you supply us with plans, specifications, or other technical information (such as CAD drawings or any other electronic software that provides detailed plans and specifications), you are responsible for providing accurate information, and we are entitled to rely on it.

- 28.2.If there is any discrepancy between the drawings and the specifications, precedence will be determined based on the election of authority agreed upon by both parties and recorded in writing. If no election of authority has been made, then the drawings will take precedence, and you agree that:
- (a)figured specifications take precedence over scaled specifications;
 - (b)large-scale specifications take precedence over small-scaled specifications;
 - (c)amended drawings take precedence over older drawings; and
 - (d)all drawings and specifications are subject to any building consent.
- 28.3.Information you supply, such as cut-out dimensions, overhangs, splashbacks, and positioning of cut-outs, given to us when placing the order or subsequently given, is your responsibility. We accept no liability whatsoever for incorrectly advised dimensions. We are not responsible for errors in the Goods or Services or additional expenses if you supply inaccurate information.

29. STATUTORY COMPLIANCE AND CONSENT

- 29.1.You agree to obtain (at your expense) all approvals, consents and licences that may be required for the Services (including consents, approvals or reports required after the commencement of the Services, such as geotechnical data).
- 29.2.We shall be responsible for providing the code compliance certificate on the completion of the Services, and both parties acknowledge and agree that:
- (a)we shall be responsible for applying for and obtaining the code compliance certificate for the Services; and
 - (b)you shall provide us with all the necessary information to apply for code compliance certificates.
- 29.3.Both parties shall comply with all 'regulations' (as defined in Part 1, section 4 of the Building Act 2004) for the Services supplied under this Agreement.

30. CONSTRUCTION CONTRACTS ACT 2002

- 30.1.We reserve the right to suspend the Services (in accordance with Part 2, subpart 4 of the CCA) by providing five days written notice if:
- (a)a claimed amount is not paid in full by the due date;
 - (b)if we have issued a payment claim and no payment schedule has been provided; or
 - (c)a scheduled amount is not paid in full by the due date for its payment, even though the payment schedule you provide indicates a scheduled amount that you propose to pay us.
- 30.2.If we suspend the Services, you acknowledge and agree that:
- (a)the suspension of the Services is not in breach of this Agreement;
 - (b)the rights and obligations in this Agreement shall remain in full force and effect;
 - (c)we are not liable for any loss or damage you suffer (or by any third party claiming through you);
 - (d)we are entitled to an extension of time to complete the Services;
 - (e)the suspension does not affect any rights that would otherwise have been available to us under Part 2, subpart 3 of the CCLA; and
 - (f) we may exercise any rights for payments or adjudication of disputes under Part 2 and Part 3 of the CCA.

31. SUBCONTRACTORS AND THIRD PARTY SUPPLIERS

- 31.1.We may subcontract any portion of the Services but may not assign or sublet all of the Services without your written consent.
- 31.2.We, at all times, shall be responsible for:
- (a)our Subcontractor's services;
 - (b)ensuring that our subcontractors have appropriate insurance in place;
 - (c)obtaining applicable warranties, guarantees, certificates and records of work required from our subcontractors; and
 - (d)taking all reasonable steps to ensure our subcontractors comply with health and safety legislation regarding the Services (in accordance with clause 27).
- 31.3.If you request and authorise us to arrange the provision of Goods or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Goods or Services to you directly by a third party supplier. You agree to pay all Amounts Owing under this Agreement if we arrange any supply of Goods or Services provided directly to you by a third party supplier. We offer no warranty regarding the quality of the workmanship of the third party supplier (including if their recommendations are appropriate or accurate).

32. LIABILITY

- 32.1.To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit you suffer arising out of our breach of this Agreement (including any unintentional misrepresentation we make to you regarding the Goods or Services).
- 32.2.To the extent permitted by law, our liability shall not exceed the Price of the Services provided under this Agreement.
- 32.3.To the extent permitted by law, our total liability under or in connection with this Agreement and the Goods or Services is limited to, at our option:
- (a)in the case of Goods, any one or more of the following: (i) the replacement of the Goods or the supply of equivalent Goods; (ii) the repair of the Goods; (iii) the payment of the expense of replacing the Goods or of acquiring equivalent Goods; or (iv) the payment of the expense of having the Goods repaired; or
 - (b)in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.
- 32.4.If, notwithstanding clause 31, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- (a)our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price

paid to us for the applicable Goods or Services; or (ii) the actual loss or damage you suffer; and

- (b)we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, clients, opportunities or loss of or damage to reputation.
- 32.5.The limitations and exclusions on liability in this clause 32 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.
- 32.6.In no circumstances will we have any liability whatsoever under or in connection with this Agreement:
- (a)for the acts or omissions of any third party;
 - (b)any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or
 - (c)to any third party.

33. GENERAL

- 33.1.Governing law: This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.
- 33.2.Entire Agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 33.3.Priority: To the extent of an inconsistency between:
- (a)this Agreement;
 - (b)all other schedules to this Agreement;
 - (c)any privacy or data agreement (if applicable); and
 - (d)the order of priority above will apply (with (a) having the highest priority).
- 33.4.Subcontracting: We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.
- 33.5.Assignment: You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign all or part of the Amounts Owing to any other person.
- 33.6.Amendments: Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.
- 33.7.Notices: Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.
- 33.8.Force majeure: We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).
- 33.9.Severability: If any part of this Agreement is illegal or unenforceable, it will be severed, and all remaining rights will continue in full force and effect.
- 33.10.Waiver: A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 33.11.Termination: Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.
- 33.12.Survival: Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive either party's termination of this Agreement.
- 33.13.Rights of third parties: This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 33.14.Relationship: We will provide you with Goods or Services as an independent contractor. Nothing in this Agreement creates a partnership, joint venture, or employment relationship between the parties.
- 33.15.Non-exclusive: This Agreement is not exclusive, and you agree that we may provide any Goods or Services to any other person without restriction.
- 33.16.Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of pdf copies), constituting one instrument.