# Above-Board Building Contractors Limited t/a Above-Board Interiors - Terms & Conditions of Trade

**1. Definitions**

1.1 "Contract" means the terms and conditions contained herein, together with any Price, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 "ABI" means Above-Board Building Contractors Limited t/a Above-Board Interiors (or otherwise referred to as the "Vendor"), its successors and assigns or any person acting on behalf of and with the authority of Above-Board Building Contractors Limited t/a Above-Board Interiors.

1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting ABI to provide the Goods as specified in any proposal, Price, order, invoice, or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client's executors, administrators, successors and permitted assigns.

1.4 "Goods" means all Goods, Services or Works supplied by ABI to the Client (including consultation, materials, manufacturing and/or installation services) supplied by ABI to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" or "Works" shall be interchangeable for the other).

1.5 "Cookies" means small files which are stored on a user's electronic device. They are designed to hold a modest amount of data (including PII) specific to a particular client and website and can be accessed either by the web server or the client's electronic device. If the Client does not wish to allow Cookies to operate in the background when ordering from the 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 ordering Goods via the website.

1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between ABI and the Client in accordance with clause 6 below.

**2. Acceptance**

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Goods.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a Client information form with ABI and it has been approved with a credit limit established for the account, if required.

2.5 In the event that the supply of Services request exceeds the Clients credit limit and/or the account exceeds the payment terms, ABI reserves the right to refuse delivery.

2.6 In the event that the Goods and/or Services provided by ABI are the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by ABI and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.

2.7 Where ABI gives advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action or product selection not being fit for purpose or the condition of materials supplied by the Client being inferior, etc), and such advice or recommendations are not acted upon, then ABI shall require the Client or their agent to authorise commencement of the Services in writing. ABI shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services nor will such losses or damages be deemed adefect.

2.8 If ABI has been requested by the Client to prepare a quotation that involves multiple site visits or third party involvement (including but not limited to engineers, surveyor or local councils), all costs involved will be charged to the Client irrespective of whether or not the Services go ahead.

2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.10 Unless otherwise stated, the quoted Price (absolutely for new houses) is based on one sealer coat and two top-coat application with an allowance made for up to four (4) hours of "touch up" work undertaken by ABI. Additional coat or "touch up" work requirements may incur additional cost to original quotation Price.

2.11 Where ABI has provided a fixed price quotation, this quotation has been based on the fact that ABI has access to a free and uninterrupted working space as provided by the Client, as stipulated in the Quotation. If the supply of services does not proceed as agreed within the Quotation,, then ABI reserves the right to charge the Client for the additional time taken to complete the Services or revoke the fixed price quote and revert to an hourly rate plus materials and travel costs.

2.12 In the event that ABI is required to provide the Services urgently, that may result in ABI to work outside normal business hours (including, but, not limited to working through lunch breaks, weekends and/or Public Holidays), then ABI reserves the right to charge the Client additional labour costs (penalty rates will apply),unless otherwise agreed between ABI and the Client.

2.13 ABI reserves the right to charge the Client for reasonable travel and accommodation costs incurred as a result of providing the Services.

2.14 ABI will use reasonable endeavours to match new Goods supplied to any existing Goods. However, the parties recognise that it may not be possible to provide an exact match of Goods. Where an exact match of Goods is not possible, ABI will provide suitable comparable Goods.

**3. Errors and Omissions**

3.1 The Client acknowledges and accepts that ABI shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by ABI in the formation and/or administration of this Contract; and/or
(b) contained in / omitted from any literature (hard copy and/or electronic) supplied by ABI in respect of the Works.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of ABI; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

**4. Authorised Representatives**

4.1 The Client acknowledges that ABI shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to ABI, that person shall have the full authority of the Client to order any Goods, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to ABI for all additional costs incurred by ABI (including ABI's profit margin) in providing any Services, or variation/s requested thereto by the Client's duly authorised representative.

**5. Change in Control**

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

**6. Price and Payment**

6.1 At ABI's sole discretion the Price shall be either:
(a) as indicated on invoices provided by ABI to the Client in respect of Services performed or Goods supplied; or
(b) ABI's quoted Price (subject to clause 6.2) which shall be binding upon ABI provided that the Client shall accept ABI's Price in writing within thirty (30) days.

6.2 ABI reserves the right to change the Price:
(a) if a variation to the Goods which are to be supplied is requested; or
(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, change of design or paint colour selection, poor surface preparation, poor weather conditions, limitations to site access, health hazards, prerequisite work by a third party not being completed, inaccurate measurements, worksite non code compliant, obscured building defects) which require remedial work,(such as repairs required to gib work, presence of rot, damp, hidden pipes, wiring in walls etc.) which are only discovered on commencement of the Services; or
(d) in the event of increases to ABI in the cost of labour or Materials which are beyond ABI's control; or
(e) if ABI are required by the Client to undertake siteworks, which will not have been included or priced, within the original quotation.

6.3 Variations will be charged for based on ABI's Price, and will be detailed in writing, and shown as variations on ABI's invoice. The Client shall be required to respond to any variation submitted by ABI within ten (10) working days. Failure to do so will entitle ABIL 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.

6.4 At ABI's sole discretion a non-refundable deposit may be required.

6.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by ABI, which may be:
(a) on completion of the Services; or
(b) by way of progress payments in accordance with ABI's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed; or
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by ABI. or
(e) immediately payable at the time the Client places an order for any non-stock list item or bespoke Goods that ABI must pay to any third-party supplier.

6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and ABI.

6.7 ABI may in its discretion allocate any payment received from the Client towards any invoice that ABI determines and may do so at the time of receipt or at any time afterwards. On any default by the Client ABI may re-allocate any payments previously received and allocated. In the absence of any payment allocation by ABI, payment will be deemed to be allocated in such manner as preserves the maximum value of ABI's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

6.8 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 ABI, nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by ABI is a claim made under the Construction Contracts Act 2002.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to ABI an amount equal to any GST ABI must pay for any supply by ABI under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off 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.

**7. Provision of the Services**

7.1 Subject to clause 7.2 it is ABI's responsibility to ensure that the Services start as soon as it is reasonably possible.

7.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that ABI claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond ABI's control, including but not limited to:
(a) extreme weather or temperature; or
(b) delays caused by third party contractors engaged by the Client; or
(c) any failure by the Client to:
(i) select; or
(ii) have the site ready for the Services; or
(iii) notify ABI that the site is ready.

7.3 Any costs incurred by ABI (e.g. standing time incurred), in relation to clause 7.2 will be passed on to the Client.

7.4 The Client acknowledges and accepts that where the Client wishes to postpone the Services, that ABI must be notified in writing within twenty-four (24) hours of the proposed commencement date as agreed to between both parties. Where such notice is received outside of this timeframe, ABI reserves the right to charge a reasonable fee for the delay in the commencement of the Services.

7.5 ABI may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.6 Any time specified by ABI for delivery of the Services is an estimate only and ABI will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that ABI is unable to supply the Services as agreed solely due to any action or inaction of the Client, then ABI shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods and any agreed delivery deadlines must be extended accordingly.

**8. Dimensions, Plans and Specifications**

8.1 ABI shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that if any of this information provided by the Client is inaccurate, ABI accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, or other information.

8.2 Where the Client is to supply ABI with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. ABI shall not be liable whatsoever for any errors in the Services that are caused by incorrect or inaccurate data being supplied by the Client.

8.3 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or ABI places an order based on these measurements and quantities. ABI accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

**9. Access**

9.1 The Client shall ensure that ABI has always clear and free access to the worksite to enable them to undertake the Services and that such access is suitable to accept the weight of laden trucks or other lorry types as deemed necessary by ABI. ABI shall not be liable for any loss or damage to the worksite (including, without limitation, damage to pathways, trees, plants, shrubs, driveways and concreted or paved or grassed areas) unless due to the negligence of ABI or its contractors.

9.2 The Client shall ensure that all fragile items are removed from the Works area. Any breakages or damages on uncleared items remain the responsibility of the Client solely.

**10. Risk**

10.1 If ABI retains ownership of the Goods under clause 15 then where ABI is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by ABI or ABI's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

10.2 If any of the Goods are damaged or destroyed following delivery, but prior to ownership passing to the Client, ABI is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ABI is sufficient evidence of ABI's rights to receive the insurance proceeds without the need for any person dealing with ABI to make further enquiries.

10.3 ABI reserves the right to inspect the worksite prior to the commencement of the Services to establish the condition of the worksite where the Services are to be provided will be of sound substructure, that is able to withstand such installation. Where consultation with engineers or other appropriate third parties is required, all costs will be borne by the Client.

10.4 The Client warrants that any structures to which the Goods are to be affixed can withstand the installation thereof and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that ABI, or ABI employees, reasonably form the opinion that the Client's premises is not safe for the Services to proceed then ABI shall be entitled to delay the provision of the Services (in accordance with clause 7.2) until ABI is satisfied that it is safe for the installation to proceed.

10.5 Where the Client has supplied Goods for ABI to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality, and any faults inherent in those Goods. However, if in ABI's opinion, it is believed that the Goods supplied will not conform to New Zealand regulations, then ABI shall be entitled, without prejudice, to halt the Services until the appropriate conforming Goods are sourced and all costs associated with such a change to the plans will be invoiced in accordance with clause 6.2.

10.6 The Client acknowledges that it is their responsibility to remove (or provide adequate dustsheets to protect the Client's) furniture, furnishings or personal goods from the vicinity of the Services and agrees that ABI shall not be liable for any damage attributed to dust or damage caused by any sanding process through the Client's failure to comply with this clause. Flaking or crumbling walls should be temporarily covered by the Client until the coatings are dry.

10.7 Where ABI is contracted to remove existing materials from a structure and discovers weather tightness / dampness issues that require other tradespeople or insurance assessment, ABI reserves the right to halt the Services and invoice the Client for Services already completed.

10.8 The Client acknowledges and accepts that where ABI has been contracted to perform cosmetic repairs (e.g. repair surface cracking) on textured or plastered surfaces, that ABI is in no way remedying or repairing any damage or moisture ingress that may have been resultant, or could result from the cracking and that such repairs are in no way a guarantee (express or implied) of water tightness.

10.9 ABI may not be able to ascertain the depth of, or if a void or cavity is present behind a crack without closer investigation. Any additional costs incurred by ABI for carrying out such investigation prior to repairing such a defect, will be borne by the Client.

10.10 The Client acknowledges and accepts that any faults with underlying surfaces / structures or where ABI has been requested to perform remedial work on damaged structures, evidence of repairs may be apparent and may affect the finish of the completed Services.

10.11 The Client acknowledges that Goods supplied may:
(a) exhibit variations in shade, colour, texture, surface, and finish and may fade or change colour over time; and
(b) expand, contract, or distort as a result of exposure to heat, cold, weather; and
(c) mark or stain if exposed to certain substances; and
(d) be damaged or disfigured by impact or scratching.

10.12 ABI offers no guarantee against the following defects or damage that may occur naturally in the Services over time:
(a) cracking of paint over plaster where the wrong paints are used for coating; or
(b) delaminating of the plaster caused by hydroscopic movement or dampness in the substrate; or
(c) damage caused by contact with chemicals, solvents, oils, or any other substances; or
(d) the occurrence of efflorescence and any detrimental effects this has on the appearance of the Services; or
(e) peeling, cracking, or flaking caused by the environment, house movement or other external factors.

10.13 ABI shall not be held liable for:
(a) any pre-existing damages discovered by ABI prior or during to commencement of the Services. The Client will be notified of any such discovery in writing; or
(b) inferior existing paintwork where ABI's paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack, blemish, blistering or delamination; or
(c) the quality of the Services if the Client does not follow ABI's recommendations as to the number of coats of paint required to obtain the final finish if the Client chooses to accept a reduced Price based on fewer coats of paint; or
(d) delays caused by any other third party that impacts on the provision of the Services by ABI.

10.14 Where ABI requires that Goods, tools, paint etc. required for the Services be stored at the site, the Client shall supply ABI a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. If any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

10.15 The Client is responsible for the provision of rubbish bins or skips onsite. Where practical these should be located within ten (10) metres of the area in which ABL is providing the Services. ABI will assist in aiding the removal of rubbish caused by or created from the provision of ABI's Services on the worksite by placing rubbish in the bins provided or adjacent to the bin if it has reached capacity. ABL shall not be held liable whatsoever for the Client not providing any or adequate bins for the collection of rubbish.

10.16 The Client acknowledges that they shall unless otherwise stated:
(a) provide hoisting or lifting equipment and/or have erected scaffolding to enable the Services to be undertaken (where in ABI's opinion it is deemed necessary). Any hoisting or lifting equipment or scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed; and
(b) supply all the necessary facilities required for the installation of the Goods and / or provision of the Services (including but, not limited to electricity, temporary lighting, unloading, and lifting facilities; and
(c) extinguish all naked flames prior to coating including but not limited to pilot lights, heaters etc; and
(d) be wholly responsible for animals and/or children on the worksite.

10.17 The Client warrants that no other tradesmen or building materials / debris interfere with any Services and/or Goods supplied under this Contract. ABI shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.

10.18 Timber is a natural product and as such may exhibit variations in texture, colour, surface, shade, finish, markings, veining and contains natural fissures, occlusions, and indentations. Whilst ABI will make every effort to match sales samples to the finished Goods, ABI accepts no liability whatsoever where such samples differ to the finished Goods supplied.

10.19 ABI gives no guarantee (expressed or implied) as to the length of time the plastering curing process will take and / or against cracking that may occur naturally in the Goods, any curing times expressed by ABI, must be adhered to by the Client, non compliance to this clause may incur additional costs to the Client.

10.20 Where ABI has effected delivery (all risk passes to the Client as per clause 10.1) and the Client claims the Goods have been stolen, it shall be The Client's responsibility to contact the police, and shall not excuse the Client from fulfilling their financial obligations under this Contract.

10.21 ABI shall be entitled to rely on the accuracy of any surveyed boundary lines, plans, specifications, and other information supplied by the Client. The Client acknowledges and agrees that if any of this information is inaccurate, ABI accepts no responsibility for any loss, damages, or costs resulting from this inaccurate information.

**11. Asbestos/Hazardous Materials**

11.1 Prior to ABI commencing any Services the Client must advise ABI of the precise location of all known Asbestos/Hazardous Materials on the site and clearly mark the same. Removal from the site and the disposal of Asbestos/Hazardous Materials shall always be the Client's responsibility unless otherwise agreed in writing.

11.2 In the event that ABI discovers Asbestos/Hazardous Materials whilst undertaking any Services ABI shall immediately advise the Client of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by ABI as a result of the discovery of Asbestos/Hazardous Materials and/or any suspension of Services in relation thereto.

11.3 Where ABI agrees to remove any Asbestos/Hazardous Materials on the Client's behalf this shall be treated as a variation as per clause 6.2.

**12. Excess Materials**

12.1 On agreement between the parties, excess materials will remain the property of ABI and shall be removed on completion of the Services, unless the materials have become fixtures. If required, the Client must return the materials to ABI on request.

**13. Compliance with Laws**

13.1 The Client and ABI 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 other Worksafe health and safety laws relating to worksites and any other safety standards or legislation.

13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services. ABI will require confirmation that all consents and approvals have been obtained by the Client prior to the commencement of the Services.

13.3 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") ABI agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.

**14. Underground Locations**

14.1 Prior to ABI commencing any Work the Client must advise ABI of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

14.2 Whilst ABI will take all care to avoid damage to any underground services the Client agrees to indemnify ABI in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 14.1.

**15. Title**

15.1 ABI and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid ABI all amounts owing to ABI; and
(b) the Client has met all of its other obligations to ABI.

15.2 Receipt by ABI 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.

15.3 It is further agreed that:
(a) until ownership of the Goods passes to the Client in accordance with clause 15.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to ABI on request; and
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for ABI and must pay to ABI the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed; and
(c) the production of these terms and conditions by ABI shall be enough evidence of ABI's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with ABI to make further enquiries; and
(d) 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 ABI and must pay or deliver the proceeds to ABI on demand; and
(e) 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 ABI and must sell, dispose of or return the resulting product to ABI as it so directs; and
(f) unless the Goods have become fixtures the Client irrevocably authorises ABI to enter any premises where ABI believes the Goods are kept and recover possession of the Goods; and
(g) ABI may recover possession of any Goods in transit whether delivery has occurred; and
(h) 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 ABI; and
(i) ABI may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**16. Personal Property Securities Act 1999 ("PPSA")**

16.1 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 and/or collateral (account – being a monetary obligation of the Client to ABI) for the Service –that have previously been supplied and that will be supplied in the future by ABI to the Client.

16.2 The Client hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:
(a) for all Goods previously supplied by the Vendor to the Client (if any);
(b) for all of its present and after acquired Goods.
(c) for intellectual property arising out of or in connection with the Services.

16.3 The Client agrees to grant a "Purchase Money Security Interest" to the Vendor in respect to all amounts owed by the Client to the Vendor, as that term is defined in the PPSA.

16.4 Where Goods in respect of which title has not passed to the Client are sold by the Client in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Client for the Vendor in terms of section 45 of the PPSA.
(a) Where any proceeds of sale are placed in the Client's bank account the funds in the Client's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale.
(b) Where any payments are made from the Client's bank account otherwise than to ABI payment shall be deemed to have been made from all other funds in the Client's bank account and not from funds held on trust for the Vendor .
(c) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Client.

16.5 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 ABI may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, ABI 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 and/or collateral (account) in favour of a third party without the prior written consent of ABI; and
(d) immediately advise ABI of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales

16.6 ABI and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

16.7 If any of the Goods are incorporated in or used as materials for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA

16.8 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131of thePPSA.

16.9 Unless otherwise agreed to in writing by ABI, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

16.10 The Client shall unconditionally ratify any actions taken by ABI under clauses 16.1 to 16.9.

16.11 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**17. Security and Charge**

17.1 In consideration of ABI agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

17.2 The Client indemnifies ABI from and against all ABI's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ABI's rights under this clause.

17.3 The Client irrevocably appoints ABI and each director of ABI as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

**18. Defects**

18.1 The Client shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify ABI of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford ABI 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 shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ABI has agreed in writing that the Client is entitled to reject, ABI's liability is limited to either (at ABI's discretion) replacing the Goods or repairing the Goods.

18.2 Materials will not be accepted for return other than in accordance with 18.1 above, and provided that:
(a) ABI have agreed in writing to accept the return of the Materials; and
(b) the Materials are returned at the Client's cost within 14 days of the delivery date; and
(c) ABI will not be liable for Materials which have not been stored or used in a proper manner.

**19. Warranties**

19.1 Subject to the conditions of warranty set out in clause 19.2 ABI warrants that if any defect in any workmanship of ABI becomes apparent and is reported to ABI within three (3) months of the date of delivery time then ABI will either replace or remedy the workmanship. Upon such notification the Client must allow ABI to first inspect the Goods or review the Services provided. If the Client has availed themselves of the Master Painters warranty as per clause 2.14, those warranty conditions will apply.

19.2 The conditions applicable to the warranty given by clause 19.1 are:
(a) the warranty shall not cover any defect or damage which may be caused or partly caused or arise through:
(i) failure on the part of the Client to properly maintain any Goods: or
(ii) failure on the part of the Client to follow any instructions or guideline provided by ABI; or
(iii) any use of the Goods otherwise than for any other application specified on a quotation: or
(iv) the continued use of any Goods 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 (see clause 28.9).
(b) the warranty shall cease, and ABI shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without ABI's consent.
(c) in respect of all claims ABI shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

19.3 For Goods not manufactured by ABI, the warranty shall be the current warranty provided by the manufacturer of the Goods. ABI 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.

**20. Consumer Guarantees Act 1993**

20.1 The Client agrees that if they are acquiring Goods for the purposes of a business (as that term is defined in the CGA) to the extent permitted by law the provisions of the CGA will not apply to the supply of Goods to the Client.

**21. Intellectual Property**

21.1 Where ABI has designed, drawn, written plans or a schedule of Services, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in ABI, and shall only be used by the Client at ABI's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of ABI.

21.2 The Client warrants that all designs, specifications or instructions given to ABI will not cause ABI to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify ABI against any action taken by a third party against ABI in respect of any such infringement.

21.3 The Client agrees that ABI may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which ABI has created for the Client.

**22. Overdue Invoices**

22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ABI's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

22.2 If the Client owes ABI any money the Client shall indemnify ABI from and against all costs and disbursements incurred by ABI in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ABI's collection agency costs, and bank dishonour fees).

22.3 Further to any other rights or remedies ABI may have under this Contract, if a Client has made payment to ABI, 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 ABI under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

22.4 Without prejudice to ABI's other remedies at law ABI shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ABI shall, whether due for payment, become immediately payable if:
(a) any money payable to ABI becomes overdue, or in ABI's opinion the Client will be unable to make a payment when it falls due; or
(b) the Client has exceeded any applicable credit limit provided by ABI; or
(c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**23. Cancellation**

23.1 Without prejudice to any other rights or remedies ABI may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then ABI may suspend the Services immediately. ABI will not be liable to the Client for any loss or damage the Client suffers because ABI has exercised its rights under this clause.

23.2 ABI may cancel any contract to which these terms and conditions apply or cancel delivery of the Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice ABI shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to ABI for Services already performed. ABI shall not be liable for any loss or damage whatsoever arising from such cancellation.

23.3 In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by ABI as a direct result of the cancellation (including, but not limited to, any loss of profits).

23.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

**24. Privacy Policy**

24.1 All emails, documents, images or other recorded information including Personal Information (PIII) as defined and referred to in clause 24.3 held or used by ABI is considered confidential. ABI acknowledges its obligation in relation to the handling, use, disclosure and processing of PII pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). ABI acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients PII, held by ABI that may result in serious harm to the Client, ABI will notify the Client in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

24.2 Notwithstanding clause 24.1, privacy limitations will extend to ABI in respect of Cookies where transactions for purchases/orders transpire directly from ABI's website. ABI 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 the Client's PII such as:
(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to ABI when ABI sends an email to the Client; so ABI may collect and review that information (collectively "PII")

If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when existing the site.

24.3 The Client authorises ABI or ABI's 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 (e.g. 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; and
(ii) for the purpose of marketing products and services to the Client.
(b) disclose information about the Client, whether collected by ABI from the Client directly or obtained by ABI 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.

24.4 Where the Client is an individual the authorities under clause 24.1 are authorities or consents for the purposes of the Privacy Act 2020.

24.5 The Client shall have the right to request ABI for a copy of the PII about the Client retained by ABI and the right to request ABI to correct any incorrect PII about the Client held by ABI.

**25. Service of Notices**

25.1 Any written notice given under this Contract shall be deemed to have been given and received:
(a) by handing the notice to the other party, in person; or
(b) by leaving it at the address of the other party as stated in this Contract; or
(c) by sending it by registered post to the address of the other party as stated in this Contract; or
(d) if sent by email to the other party's last known email address.

25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**26. Suspension of Works**

26.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
(a) ABI 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 6.5 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 ABI by a particular date; and
(iv) ABI has given written notice to the Client of its intention to suspend the carrying out of construction work under the Construction Contract.
(b) if ABI suspends work, it:
(i) is not in breach of Contract; and
(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
(iii) is entitled to an extension of time to complete the Contract; and
(iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
(c) if ABI exercises the right to suspend work, the exercise of that right does not:
(i) affect any rights that would otherwise have been available to ABI 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 ABI suspending work under this provision;
(d) due to any act or omission by the Client, the Client effectively precludes ABI from continuing the Works or performing or complying with ABI's obligations under this Contract, then without prejudice to ABI's other rights and remedies, ABI may suspend the Works 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 Works is based. All costs and expenses incurred by ABI as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

26.2 If pursuant to any right conferred by this Contract, ABI suspends the Works and the default that led to that suspension continues un-remedied subject to clause 23.1 for at least ten (10) working days, ABI shall be entitled to terminate the Contract, in accordance with clause 23.

**27. Returns**

27.1 ABI has no obligation to accept the return of Materials for credit.

27.2 ABI may (at its sole discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the returned Materials plus any freight charges

**28. Trusts**

28.1 If the Client at any time upon or subsequent to entering the Contract is acting in the capacity of trustee of any trust ("Trust") then whether ABI may have notice of the Trust, the Client covenants with ABI as follows:
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund; and
(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or 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; and
(c) the Client will not without consent in writing of ABI (ABI will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
(i) the removal, replacement, or retirement of the Client as trustee of the Trust; or
(ii) any alteration to or variation of the terms of the Trust; or
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust property.

**29. General**

29.1 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 the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

29.2 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.

29.3 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 Auckland.

29.4 ABI shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ABI of these terms and conditions (alternatively ABI's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).

29.5 ABI may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

29.6 The Client cannot licence or assign without the written approval of ABI.

29.7 ABI may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of ABI's sub-contractors without the authority of ABI.

29.8 The Client agrees that ABI may amend their general terms and conditions for subsequent future contracts 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 ABI to provide Services to the Client.

29.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other event beyond the reasonable control of either party. (referenced as Force-Majeure).

29.10 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.



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