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## Europica Tiles – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Vendor” means Europica Tiles and Design Limited T/A Europica Tiles, its successors and assigns or any person acting on behalf of and with the authority of Europica Tiles and Design Limited T/A Europica Tiles.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by the Vendor to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between the Vendor and the Customer in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Vendor’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Vendor.
- 2.3 The Customer agrees to provide the Vendor with the proposed Building Schedule Timeframes for the project prior to commencement of the Services. The Vendor accepts no liability for delays if the Customer fails to comply with this clause.
- 2.4 The Vendor may at its discretion notify the Customer that it requires to store at the worksite materials, fittings and appliances, or plant and tools required for the Services, in which event the Customer shall supply the Vendor a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Customer’s responsibility.
- 2.5 The Customer acknowledges and agrees that it is their responsibility to obtain any necessary approvals or permits from local council or government for the Services. The Vendor shall not be held liable for the Customer’s failure to comply with this clause.
- 2.6 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Vendor’s web site. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

### 3. Change in Control

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

### 4. Price and Payment

- 4.1 At the Vendor’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Vendor to the Customer; or
  - (b) the Vendor’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Vendor reserves the right to change the Price if a variation to the Vendor’s quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to the Vendor in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, obscured surface defects, safety considerations or prerequisite work by any third party not being completed etc which are only discovered on commencement of the Services) will be charged for on the basis of the Vendor’s quotation and will be shown as variations on the invoice.
- 4.3 At the Vendor’s sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Vendor, which may be:
  - (a) before delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with the Vendor’s payment schedule;
  - (c) for certain approved Customer’s, due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Vendor.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Vendor.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Vendor an amount equal to any GST the Vendor must pay for any supply by the Vendor under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must

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pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. Delivery of Goods

- 5.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at the Vendor’s address; or
  - (b) the Vendor (or the Vendor’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 5.2 Subject to clause 5.3 it is the Vendor’s responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.3 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Vendor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Vendor’s control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify the Vendor that the site is ready.
- 5.4 At the Vendor’s sole discretion the cost of delivery is in addition to the Price.
- 5.5 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Vendor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.6 The Vendor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.7 Any time or date given by the Vendor to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Vendor will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

### 6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Vendor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Vendor is sufficient evidence of the Vendor’s rights to receive the insurance proceeds without the need for any person dealing with the Vendor to make further enquiries.
- 6.3 If the Customer requests the Vendor to leave Goods outside the Vendor’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer’s sole risk.
- 6.4 The Customer acknowledges that it is the Customer’s responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or the Customer’s figures by the Vendor are approximate only and no responsibility is taken for their accuracy.
- 6.5 If the Customer orders an insufficient number of tiles, then the Vendor will take no responsibility for any variation of colour in further batches supplied to the Customer or the inability to supply Goods at all.
- 6.6 The Vendor will accept no responsibility for tiles that have already been affixed.
- 6.7 The Customer acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by the Vendor to match colour, shade or grain of product, the Vendor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 6.8 Tiles are not guaranteed against crazing, cracking, chipping or scratching.
- 6.9 Granite and marble, being stone products that have natural colour and shade tones, markings, and veining may vary from colour samples provided. The Vendor gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. The Vendor will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.
- 6.10 Marble and Granite being porous products, therefore, all products supplied by the Vendor are sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Customer agrees to indemnify the Vendor against any damage occurring after delivery and installation.

### 7. Flooring Risk

- 7.1 The Vendor will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.
- 7.2 Whilst the Vendor will take all due care to avoid contamination of the finished surface, the Vendor accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite.
- 7.3 The Vendor will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.

**8. Customers Responsibilities**

- 8.1 It is the Customers responsibility to;
- (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
  - (b) ensure the sub-floor is adequately ventilated and is structurally sound; and
  - (c) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and
  - (d) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by the Vendor in this regard; and
  - (e) provide adequate dust sheets to protect the Customer's furniture and décor. The Vendor will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Customer, until the coatings are dry; and
  - (f) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc; and
  - (g) supply power to within eight (8) metres of the project; and
  - (h) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between the Vendor and the Customer, any additional costs will be invoiced to the Customer as an extra.
- 8.2 The Vendor is not insured to remove furniture or fittings and will not do so, nor is the Vendor licensed to move gas or electrical appliances.

**9. Accuracy of Customers Plans and Measurements for Orders**

- 9.1 The Vendor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Vendor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Vendor places an order based on these measurements and quantities. The Vendor accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

**10. Access**

- 10.1 The Customer shall ensure that the Vendor has clear and free access to the work site at all times to enable them to undertake the Services. The Vendor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Vendor.

**11. Underground Locations**

- 11.1 Prior to the Vendor commencing any work the Customer must advise the Vendor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst the Vendor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Vendor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

**12. Title**

- 12.1 The Vendor and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Vendor all amounts owing to the Vendor; and
  - (b) the Customer has met all of its other obligations to the Vendor.
- 12.2 Receipt by the Vendor 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Goods and must return the Goods to the Vendor on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Vendor and must pay to the Vendor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Vendor and must pay or deliver the proceeds to the Vendor on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Vendor and must sell, dispose of or return the resulting product to the Vendor as it so directs.

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- (e) the Customer irrevocably authorises the Vendor to enter any premises where the Vendor believes the Goods are kept and recover possession of the Goods.
- (f) the Vendor may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Vendor.
- (h) the Vendor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by the Vendor to the Customer (if any) and all Goods that will be supplied in the future by the Vendor to the Customer.
- 13.2 The Customer undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Vendor 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 a financing change statement or a change demand without the prior written consent of the Vendor; and
  - (d) immediately advise the Vendor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Vendor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Vendor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by the Vendor under clauses 13.1 to 13.5.

### 14. Security and Charge

- 14.1 In consideration of the Vendor agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies the Vendor from and against all the Vendor’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Vendor’s rights under this clause.
- 14.3 The Customer irrevocably appoints the Vendor and each director of the Vendor as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer’s behalf.

### 15. Customer’s Disclaimer

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

### 16. Defects

- 16.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Vendor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Vendor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Vendor has agreed in writing that the Customer is entitled to reject, the Vendor’s liability is limited to either (at the Vendor’s discretion) replacing the Goods or repairing the Goods.

### 17. Returns

- 17.1 Returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 16.1; and
  - (b) the Vendor has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Customer’s cost within seven (7) days of the delivery date; and
  - (d) the Vendor will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.2 The Vendor will not accept the return of Goods for credit.

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- 17.3 The Vendor may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 17.4 Returned Goods may (at the Vendor's sole discretion), incur restocking and handling fees.
- 17.5 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

### 18. Warranty

- 18.1 Subject to the conditions of warranty set out in clause 18.2 the Vendor warrants that if any defect in any workmanship of the Vendor becomes apparent and is reported to the Vendor within twelve (12) months of the date of delivery (time being of the essence) then the Vendor will either (at the Vendor's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
  - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Vendor; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; 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.
  - (b) the warranty shall cease and the Vendor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Vendor's consent.
  - (c) in respect of all claims the Vendor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 18.3 For Goods not manufactured by the Vendor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Vendor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

### 19. Consumer Guarantees Act 1993

- 19.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Vendor to the Customer.

### 20. Intellectual Property

- 20.1 Where the Vendor has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Vendor.
- 20.2 The Customer warrants that all designs, specifications or instructions given to the Vendor will not cause the Vendor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Vendor against any action taken by a third party against the Vendor in respect of any such infringement.
- 20.3 The Customer agrees that the Vendor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Vendor has created for the Customer.

### 21. Default and Consequences of Default

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Vendor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes the Vendor any money the Customer shall indemnify the Vendor from and against all costs and disbursements incurred by the Vendor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Vendor's collection agency costs, and bank dishonour fees).
- 21.3 Without prejudice to any other remedies the Vendor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Vendor may suspend or terminate the supply of Goods to the Customer. The Vendor will not be liable to the Customer for any loss or damage the Customer suffers because the Vendor has exercised its rights under this clause.
- 21.4 Without prejudice to the Vendor's other remedies at law the Vendor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Vendor shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to the Vendor becomes overdue, or in the Vendor's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**22. Dispute Resolution**

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

**23. Compliance with Laws**

23.1 The Customer and the Vendor 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.

23.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

23.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

**24. Cancellation**

24.1 The Vendor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Vendor shall repay to the Customer any money paid by the Customer for the Goods. The Vendor shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

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

**25. Privacy Act 1993**

25.1 The Customer authorises the Vendor or the Vendor's agent to:

- (a) access, collect, retain and use any information about the Customer;
  - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by the Vendor from the Customer directly or obtained by the Vendor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

25.2 Where the Customer is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.

25.3 The Customer shall have the right to request the Vendor for a copy of the information about the Customer retained by the Vendor and the right to request the Vendor to correct any incorrect information about the Customer held by the Vendor.

**26. Unpaid Vendor's Rights**

26.1 Where the Customer has left any item with the Vendor for repair, modification, exchange or for the Vendor to perform any other service in relation to the item and the Vendor has not received or been tendered the whole of any moneys owing to it by the Customer, the Vendor shall have, until all moneys owing to the Vendor are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

26.2 The lien of the Vendor shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Vendor having been obtained against the Customer.

**27. Construction Contract Act 2002**

27.1 The Customer hereby expressly acknowledges that:

- (a) the Vendor has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
  - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
  - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Vendor by a particular date; and
  - (iv) the Vendor has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.

- (b) if the Vendor suspends work, it:
  - (i) is not in breach of contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
  - (iii) is entitled to an extension of time to complete the contract; and

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- (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 the Vendor exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to the Vendor under the Contractual Remedies Act 1979; or
  - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Vendor suspending work under this provision.

### **28. General**

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