

## **Bayside Electrical Services Limited – Terms & Conditions of Trade**

1.1	<b>'Bayside'</b> means Bayside Electrical Services Limited, its successors and assigns.	(b)	shall not be responsible for any additional costs incurred by the Supplier arising from the error or omission.		suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
1.2	<b>'Client'</b> means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Bayside to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:	5.	<b>Change in Control</b>	8.4	In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Bayside immediately upon any proposed changes. The Client agrees to indemnify Bayside against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
	(a) if there is more than one Client, is a reference to each Client jointly and severally; and	5.1	The Client shall give Bayside not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Bayside as a result of the Client's failure to comply with this clause.	8.5	The Client acknowledges and accepts that:
	(b) if the Client is a partnership, it shall bind each partner jointly and severally; and	6.	<b>Price and Payment</b>		(a) where Bayside has performed temporary repairs that:
	(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee, and includes the Client's executors, administrators, successors and permitted assigns.	6.1	At Bayside's sole discretion the Price shall be either:		(i) Bayside offers no guarantee against the recurrence of the initial fault, or any further damage caused;
1.3	<b>'Contract'</b> means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.		(a) as indicated on invoices provided by Bayside to the Client in respect of Works performed or Materials supplied; or		(ii) Bayside will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required;
1.4	<b>'Cookies'</b> means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using Bayside's website, then the Client shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.	6.2	Bayside reserves the right to change the Price:		(b) Bayside is only responsible for components that are replaced by Bayside and does not at any stage accept any liability in respect of previous Materials and/or Works supplied by any other third party that subsequently fail or are found to be the source of the failure;
1.5	<b>'Intended Use'</b> means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.		(a) if a variation to the Materials which are to be supplied is requested;		(c) Bayside shall not be responsible or liable for any defect in other appliances or power points as a coincidence of Bayside installing the Materials;
1.6	<b>'Non-Conforming Building Product'</b> means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:		(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or		(d) Bayside shall not accept any responsibility for any damage that may arise during the installation of light switches in the event that any third-party contractor employed by the Client has removed any or all references to the positioning of light switches by either cutting or plastering the designated area. The Client accepts that installation of light switches will then be at the sole discretion of Bayside. If the Client believes that they have any claim in relation to Works undertaken by that third party then said claim must be made against the third-party contractor in the first instance;
	(a) the product is not, or will not be, safe; or		(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to the Works access and/or crawl spaces, as a result of delays from third party suppliers, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock or other barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring, etc) which are only discovered on commencement of the Works; or		(e) any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which Bayside's Materials are installed or connected to, or by workmanship not performed by Bayside, shall not be covered by any applicable warranty pertaining to the Materials;
	(b) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.	6.3	Variances will be charged for on the basis of Bayside's quotation, and will be detailed in writing, and shown as variations on Bayside's invoice. The Client shall be required to respond to any variations by Bayside within 10 (ten) working days. Failure to do so will entitle Bayside 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.		(f) it is the Client's responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage;
1.7	<b>'Price'</b> means the Price payable, plus any Goods and Services Tax (GST) where applicable, for the Works as agreed between Bayside and the Client in accordance with clause 6 below.	6.4	At Bayside's sole discretion a reasonable non-refundable deposit may be required.		(g) Bayside shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of Bayside (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry Works) which Bayside may have to break into or disturb in performance of the Works), unless due to the negligence of Bayside;
1.8	<b>'Works'</b> means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Bayside to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).	6.5	Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Bayside, which may be:		(h) under no circumstances, will Bayside handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
1.9	<b>'Worksite'</b> means the address nominated by the Client to which the Materials are to be supplied by Bayside.		(a) on completion of the Works;		(i) Bayside shall suspend the Works;
2.	<b>Acceptance</b>		(b) by way of progress payments in accordance with Bayside's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed;		(ii) the Client shall be fully responsible for the resolution of any resulting issues or variations, but shall not be liable in any way whatsoever where such variations occur;
2.1	The parties acknowledge and agree that:		(c) the Client shall be deemed to have accepted the Client's address or address for notices;		(iii) any additional cost incurred by Bayside shall be added to the Price under clause 6.2;
	(a) they have read and understood the terms and conditions contained in this Contract; and		(d) the date specified on any invoice or other form as being the date for payment; or		(i) Materials supplied may:
	(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.		(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Bayside.		(ii) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Bayside will make that effort to match Bayside's standard product supplied in order to minimise any variations, but shall not be liable in any way whatsoever where such variations occur;
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.	6.6	At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 24 - sections 18(a) to 18(f) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be used other than to remedy defects in the performance of Bayside's obligations under the Contract.	9.	<b>Accuracy of Client's Plans &amp; Measurements for Orders</b>
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.	6.7	Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Bayside.	9.1	Bayside shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Bayside accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
2.4	The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with Bayside and it has been approved with a credit limit established for the account.	6.8	Bayside may in its discretion allocate any payment received from the Client towards any invoice that Bayside determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Bayside may re-allocate any payments previously received and allocated. In the absence of any payment allocated by Bayside, payment will be deemed to be allocated in such manner as preserves the maximum value of Bayside's Personal Money Security Interest (as defined in the FPSA) in the Materials.	9.2	In the event the Client gives information relating to measurements and quantities of Materials required in completing the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Bayside places an order based on these measurements and quantities. Bayside accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
2.5	In the event that the supply of Works requested exceeds the Client's credit limit and/or the amount exceeds the payment terms, Bayside reserves the right to refuse delivery.	6.9	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 Bayside nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Bayside is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Client from the ability to dispute any invoice.	10.	<b>Worksite Access and Condition</b>
2.6	Any advice, recommendation, information, assistance or service provided by Bayside in relation to the Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on Bayside's own knowledge and experience and shall be accepted without liability on the part of Bayside. Where such advice or recommendations are not acted upon then Bayside shall require the Client or their agent to authorise commencement of the Works in writing. Bayside shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.	6.10	Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Bayside an amount equal to any GST Bayside must pay for any supply by Bayside under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	10.1	Bayside is not responsible for the removal of rubbish from or clean-up of the building/construction Worksites. All rubbish generated by Bayside will be placed in a designated area appointed by the Client but the removal of same is the Client or the Client's agent, unless otherwise agreed.
2.7	Where the Client is a tenant (and therefore not the owner of the land and premises where Works are to be carried out) then the Client warrants that they have obtained the full consent of the owner for Bayside to carry out the Works on the owner's land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for the Works provided under this Contract and to indemnify Bayside against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by Bayside, except where such claim has arisen because of the negligence of Bayside when undertaking the Works. Furthermore, the Client agrees that they shall, upon request from Bayside, provide evidence that:			10.2	It is the intention of Bayside and agreed by the Client that:
	(a) they are the owner of the land and premises upon which the Works are to be undertaken; or	7.	<b>Provision of the Works</b>		(a) the Client shall ensure that Bayside has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain

Please note that a larger print version of these terms and conditions is available from Bayside on request.

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## Bayside Electrical Services Limited – Terms & Conditions of Trade

12.4

products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.

12.5

The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

12.6

All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring Standards.

12.7

If during the course of installation when the Works are being conducted within and around switchboards that the same is found defective or deemed to be unsafe by Bayside, then Bayside shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance with the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.

12.8

Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Statutory Acts and Work Place Regulations". Bayside's live Works procedures are designed to eliminate risk of injury to Bayside's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.

13.0

Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), Bayside agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

13.1

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

13.2

Receipt by Bayside 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.

13.3

It is further agreed that:  
(a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Bayside on request;  
(b) the Client holds the benefit of the Client's insurance of the Materials on trust for Bayside and must pay to Bayside the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;  
(c) the production of these terms and conditions by Bayside shall be sufficient evidence of Bayside's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Bayside to make further enquiries;  
(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Bayside and must pay or deliver the proceeds to Bayside on demand;  
(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Bayside and must sell, dispose of or return the resulting product to Bayside as it so directs;  
(f) unless the Materials have become fixtures the Client irrevocably authorises Bayside to enter any premises where Bayside believes the Materials are kept and recover possession of the Materials;  
(g) Bayside may recover possession of any Materials in transit whether or not delivery has occurred;  
(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Bayside; and  
(i) Bayside may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

14.1

**Personal Property Securities Act 1999 ("PPSA")**  
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;  
(b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by Bayside to the Client and the proceeds from such Materials as listed by Bayside to the Client in invoices rendered from time to time.

14.2

The Client undertakes to:  
(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Bayside may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;  
(b) indemnify, and upon demand reimburse, Bayside for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Materials charged thereby;  
(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of Bayside; and  
(d) immediately advise Bayside of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.

14.3

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

14.4

The Client shall unconditionally ratify any actions taken by Bayside under clause 14.1 to 14.3.

14.5

Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15.0

**Security and Charge**

15.1

In consideration of Bayside agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

15.2

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

15.3

The Client irrevocably appoints Bayside and each director of Bayside as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16.0

**Defects and Returns of Materials**

16.1

The Client shall inspect the Materials on delivery and shall within thirty (30) days of delivery (time being of the essence) notify Bayside of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Bayside an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials Bayside has agreed in writing that the Client is entitled to reject. Bayside's liability is limited to either (at Bayside's discretion) replacing the Materials or repairing the Materials.

16.2

Materials will not be accepted for return other than in accordance with 16.1 above.

17.0

**Warranties**

17.1

Subject to the conditions of warranty set out in clause 17.2 Bayside warrants that if any defect in any workmanship provided by Bayside becomes apparent and is reported to Bayside within twelve (12) months of the date of delivery (time being of the essence) then Bayside will either (at

17.2

The conditions applicable to the warranty given by clause 17.1 are:

17.3

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

17.4

(i) failure on the part of the Client to properly maintain any Materials or service them;

17.5

(ii) failure on the part of the Client to follow any instructions or guidelines provided by Bayside; or

17.6

(iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or

17.7

(iv) the continued use of any Materials or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

17.8

(v) fair wear and tear, any accident or act of God.

17.9

(b) the warranty shall cease and Bayside shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Bayside's consent.

17.10

(c) the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

18.0

**Consumer Guarantees Act 1993 and the Fair Trading Act 1986**

18.1

If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Materials by Bayside to the Client.

18.2

Bayside agrees to abide by the provisions of the Fair Trading Act ("FTA").

19.0

**Intellectual Property**

19.1

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

19.2

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

19.3

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

20.0

**Default and Consequences of Default**

20.1

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 Bayside's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2

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

20.3

Further to any other rights or remedies Bayside may have under this Contract, if the Client has made payment to Bayside, 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 Bayside under this clause 20, 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.

20.4

Without prejudice to Bayside's other remedies at law Bayside shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Bayside shall, whether or not due for payment, become immediately payable if:  
(a) any money payable to Bayside becomes overdue, or in Bayside's opinion the Client will be unable to make a payment when it falls due;  
(b) the Client has exceeded any applicable credit limit provided by Bayside;  
(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.

21.0

**Cancellation**

21.1

Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Materials or Works to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

21.2

If Bayside, due to reasons beyond Bayside's reasonable control, is unable to deliver any Materials or Works to the Client, Bayside may cancel any contract to which these terms and conditions apply or cancel delivery of Materials or Works at any time before the Materials or Works are delivered by giving written notice to the Client. On giving such notice Bayside shall repay to the Client any money paid by the Client for the Materials or Works. Bayside shall not be liable for any loss or damage whatsoever arising from such cancellation.

21.3

The Client may cancel delivery of the Materials and/or Works by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept delivery of the Materials and/or Works shall place the Client in breach of this Contract.

21.4

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

22.0

**Privacy Policy**

22.1

All emails, documents, images or other recorded information held or used by Bayside is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. Bayside acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. Bayside acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Bayside that may result in serious harm to the Client, Bayside will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.

22.2

Notwithstanding clause 22.1, privacy limitations will extend to Bayside in respect of Cookies where the Client utilises Bayside's website to make enquiries. Bayside agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:  
(a) IP address, browser, email client type and other similar details;  
(b) tracking website usage;  
(c) reports are available to Bayside when Bayside sends an email to the Client, so Bayside may collect and review that information ("collectively Personal Information").

22.3

If the Client consents to Bayside's use of Cookies on Bayside's website and later wishes to withdraw that consent, the Client may manage and control the controls via the Client's web browser, including deleting Cookies by deleting them from the browser's history when exiting the site. The Client authorises Bayside or Bayside'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 (email, Facebook or Twitter details), medical insurance details or next of kin and other personal information (wherever applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or  
(ii) for the purpose of marketing products and services to the Client.

22.4

(b) disclose information about the Client, whether collected by Bayside from the Client directly or obtained by Bayside 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.

22.5

Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.

22.6

The Client shall have the right to request (by e-mail from Bayside, a copy of the Personal Information about the Client retained by Bayside and the right to request that Bayside correct any incorrect Personal Information. Bayside will destroy Personal Information upon the Client's request (by e-

22.7

obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

22.8

The Client can make a privacy complaint by contacting Bayside via e-mail. Bayside will respond to that complaint within seven (7) days of receipt and will take all reasonable steps or make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

23.0

**Suspension of Works**

23.1

Where the Contract is subject to section 24A of the Construction Contracts Act 2003, the Client hereby expressly acknowledges that:  
(a) Bayside 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 made by any 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 Bayside by a particular date;  
(iv) Bayside has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.  
(b) If Bayside 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, also alive 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 Bayside exercises the right to suspend work, the exercise of that right does not:  
(i) affect any rights that would otherwise have been available to Bayside under the Contract and Commercial Law Act 2017;  
(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 Bayside suspending work under this provision;  
(d) due to any act or omission by the Client, the Client effectively precludes Bayside from continuing the Works, or performing or complying with its obligations under this Contract, without prejudice to Bayside's other rights and remedies. Bayside 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 Bayside as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

24.0

**Service of Notices**

24.1

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;  
(b) by leaving it at the address of the other party as stated in this Contract;  
(c) by sending it by registered post to the address of the other party as stated in this Contract;  
(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;  
(e) if sent by email to the other party's last known email address.

24.2

Any notice that is posted or sent by email 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.

25.0

**Trusts**

25.1

If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then Bayside and Bayside's agents may have notice of the Trust, the Client covenants with Bayside as follows:  
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;  
(b) the Client has full and complete power and authority under the Trust or the Trustees of the Trust as the case may be 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, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;  
(c) the Client will not during the term of the Contract without consent in writing of Bayside (which consent shall be not unreasonably withheld, 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;  
(ii) any alteration to or variation of the terms of the Trust;  
(iii) any advancement or distribution of capital of the Trust; or  
(iv) any resettlement of the trust fund or trust property.

26.0

**General**

26.1

Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996.

26.2

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.

26.3

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 New Zealand.

26.4

Subject to the CGA, the liability of Bayside and the Client under this Contract shall be limited to the Price.

26.5

Bayside may licence and/or assign all or any part of its rights and/or obligations under this Contract to any third party without the Client's consent provided the assignment does not cause detriment to the Client.

26.6

The Client cannot licence or assign without the written approval of Bayside. Bayside may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing.

26.7

Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Bayside's sub-contractors without the authority of Bayside.

26.8

The Client agrees that Bayside 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 Bayside to provide the Client with the Client's copy of the amended terms and conditions.

26.9

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Bayside, following cessation of a Force Majeure.

26.10

Both parties warrant that they have the power to enter into 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.

Please note that a larger print version of these terms and conditions is available from Bayside on request.

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