

Terms of Trade

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Here The *Whole Way* Through

1. Definitions

1.1 "BJL" means Brewer Joinery Limited T/A DuCo, its successors and assigns, or any person acting on behalf of, and with the authority of, Brewer Joinery Limited.

1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting BJL to provide the Services as specified in any proposal, quotation, 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 part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Goods" means all Goods or Services supplied by BJL to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between BJL and the Client in accordance with clause 5 below.

1.5 "Claim" means any claim, action or proceedings by any party whether in court, any tribunal or before any adjudicator, for any monies (including any notice of any such potential claim action, suit of proceeding, etc.), on any basis whatsoever, including, but not limited to, any claim in contract, in tort pursuant to any principle of law or equity.

1.6 "Damages" means all liabilities, losses, damages, costs (including, without limitation, legal costs on a solicitor/client basis, etc.) or expenses, including loss of profits, economic loss, or failure to realise anticipating savings or benefits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or publicity, damage to credit rating, loss of use, remote, abnormal or unforeseeable loss, or any similar loss, whether or not in the reasonable contemplation of the parties at the time this contract was entering into.

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 Goods, or accepts Delivery.

2.2 This contract constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to its subject matter and shall supersede any previous discussion, agreement or alternative terms proposed by the parties. The Client agrees and acknowledges that, in entering into this contract it has not relied, and does not rely, on any representation by any employee or agent of BJL, not expressly incorporated into the terms and conditions of this contract.

2.3 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and BJL.

2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Sections 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.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that BJL 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 BJL in the formation and/or administra-

tion of this contract; and/or

- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by BJL in respect of the Services.

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 BJL; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Client shall give BJL 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, or business practice). The Client shall be liable for any loss incurred by BJL as a result of the Client's failure to comply with this clause.

5. Specifications, Price and Payment

5.1 At BJL' sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by BJL to the Client; or
- (b) BJL' quoted price (subject to clause 6) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. If not accepted within this time, the quotation will lapse without further notice to the Client, and shall be deemed to be an estimate; or
- (c) BJL' estimated Price, which shall not be binding upon BJL as the final Price can only be ascertained upon Delivery. Variances in the estimated Price of more than ten percent (10%) will be subject to the Client's approval before proceeding with the order.

5.2 Unless the Client has already measured the structure, the measurements in the quotation are based on specifications supplied by the Client and if BJL finds any inaccuracy in those specifications, BJL may recalculate the Price and requote on the same basis as used with the specifications.

5.3 Where the Client accepts a quotation (or estimate) from BJL for Goods and BJL has advised the Client that such Goods are of an experimental nature (such decision shall be at BJL' sole discretion), the Client will be liable for the Price regardless of whether the outcome of the Goods meets the Client's expectations.

5.4 At BJL's sole discretion, a non-refundable deposit of up to fifty percent (50%) may be required.

5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by BJL, which may be:

- (a) before Delivery; or
- (b) by way of progress payments which may be issued in accordance with BJL's specified progress payment schedule, or at the end of each calendar month, for the value of Goods BJL supplied up to that date or stage. Such progress payment claims may include the reasonable value of authorised variations; or
- (c) for credit account holders, due twenty (20) days following the end of the month in which a statement is posted to the Client'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 Client by BJL.

5.6 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 Services during which time all Works are to be completed and/or all defects are to be remedied.

5.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and BJL.

5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to BJL an amount equal to any GST BJL must pay for any supply of Goods by BJL under this contract or any other agreement. 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.

5.9 BJL may apply any payment received from, or on behalf of, the Client in reduction of the Client's indebtedness as BJL sees fit.

5.10 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 BJL nor to withhold payment of any invoice because part of that invoice is in dispute.

5.11 Where the Price includes a contingency sum, the parties acknowledge that such sum is BJL's contingency and BJL is not accountable to the Client for any expenditure of such sum. The sum is not for the benefit of the Client and is not to be used for the purpose of any variations requested by the Client, or for any other adjustments provided for under this contract. No credit is to be provided by BJL to the Client for any part of the sum.

5.12 The terms of the Construction Contracts Act 2002 shall apply to payments by instalments.

6. Variations

6.1 BJL reserves the right to change the Price:

- (a) if a variation to the Goods (including any applicable plans or specifications) which are to be supplied is requested; or
- (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limited or obstructed access to the site, inclement weather, underground or hidden services, etc.) which are only discovered on commencement of the Services; or
- (c) in the event of any increases or additional costs, whether in the cost of materials, labour, subcontractors or services, or arising as a result of any change in currency exchange rates, becoming effective after the date of the quotation, and before Delivery, which are beyond BJL's control.

6.2 Variations will be charged for on the basis of BJL's quotation, and will be detailed in writing, and shown as variations on BJL's invoice. The Client shall be required to respond to any variation submitted by BJL within ten (10) working days. Failure to do so will entitle BJL 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.

6.3 Up until manufacture, BJL shall carry out all reasonable variations requested by the Client within the general scope of the original order. Any changes to any type, amount or quantity of the Goods, whether instructed by the Client or its representative, or necessary for the supply of the Goods, and whether the instruction is verbal or written, shall be treated as a variation.

6.4 Where reasonably practical, BJL shall provide the Client with a quotation or estimate prior to applying any variation. However, the parties agree that there may be circumstances where it is not reasonably practical for BJL to do so. In either circumstance, BJL shall be entitled to charge the following in respect to any variation:

- (a) any additional costs, including labour incurred and charged at BJL standard rates; and
- (b) any costs as a result of any delay; and
- (c) BJL's margin; and

6.5 In the event that any variation is required by the determination of any sub-contractor or consultant, or by the territorial authority as a condition of the granting of a consent or otherwise, or in order to comply with the Building Code, then:

- (i) the parties shall consult concerning the requirement. The Client shall advise BJL whether it wishes the variation to be carried out, or whether it wishes some alternative (if any), which will avoid the need for the variation. Where the Client instructs BJL to undertake any variation, the Client shall have no Claim for Damages in respect of such variation and indemnifies BJL in respect of any Claim for Damages arising directly or indirectly out of such variation; and
- (ii) the costs of such variation shall be borne by the Client and charged pursuant to clause 6.4 and costs of any third party engaged will be charged pursuant to clause 16

7. Provisional Sums and Prime Cost Items

7.1 For the purposes of this clause 7, the following words shall have their corresponding meanings:

- (a) "Prime Cost Item" shall mean materials that either have not been selected, or the price of which is not known, at the time this contract is entered into, and for which the cost of supply, installation and/or delivery BJL must make a reasonable allowance for in this contract; and
- (b) "Provisional Sum" shall mean an estimate of the cost of carrying out particular Services under this contract for which BJL, after making all reasonable inquiries, cannot give a definite price for at the time this contract is entered into.

7.2 The Client agrees and acknowledges that any Prime Cost Item or Provisional Sum provided for in this contract is an allowance only and BJL makes no representation as to the proximity or otherwise of the allowance to the actual cost as provided for in clause 7.5 below, and the Client acknowledges that it has not relied on any such representation. The parties agree that there is no express or implied term arising directly or indirectly out of such allowances provided by BJL.

7.3 The expenditure of each Prime Cost Item will be arranged by BJL, as agreed with the Client.

7.4 Where BJL is required to provide Services pursuant to a Provisional Sum, the Client accepts that the extent of the Services required, and the cost thereof, may be unknown until completion of those Services.

7.5 The actual cost of the materials or Services, being BJL's current price for such, will be substituted for each Prime Cost Item and/or Provisional Sum. If the actual cost of a Prime Cost Item or the actual cost of the Services for a Provisional Sum is:

- (a) less than the sum allowed for that item, then the difference shall be deducted from the Price and shall be shown as such by BJL in the invoice; and
- (b) greater than the sum allowed for that item, then the difference (plus BJL's standard margins and other costs) shall be added to the Price and shall be claimed by BJL in the invoice.

7.6 BJL will supply, upon request by the Client, copies of all invoices relating to the cost of any Prime Cost Item and/or Provisional Sum.

8. Consents and Approvals

8.1 The Client is responsible for obtaining and paying for any authorisations, licences, permits or consents (including building consent and/or resource consent) arising directly or

indirectly out of, or in connection with, the supply of Goods by BJL, including but not limited to, the buying, processing usage, export, import or reselling of any part, or all, of the Goods.

8.2 BJL is entitled to withhold any information relating to the Goods necessary to obtain the Code of Compliance Certificate in the event that the Client has not paid all amounts owing to BJL, and the Client agrees to indemnify BJL in respect of any Claim for Damages against BJL in respect of any such damage.

9. Construction of the Goods

9.1 Subject to clause 9.4 BJL shall commence construction of the Goods within a reasonable time of the latter of:

- (a) instruction from the Client to proceed with its order; or
- (b) the payment of any deposit required; or
- (c) the issue of any building consent and/or resource consent required for the Goods.

9.2 Where the Goods are to be constructed at a location other than BJL' premises:

- (a) the Client agrees to pay any and all additional costs as a result of the Goods being constructed at an alternative location; and
- (b) the Client shall provide power on site to run power tools and compressors, water and access to toilet and wash basin facilities; and on completion of the construction of the Goods BJL shall leave the site in a tidy condition but shall not be responsible for thorough cleaning of the site.

9.3 Further where the Goods are to be constructed at a location other than BJL' premises, or where BJL is arranging for transportation of the Goods pursuant to clause 10.1(b) then:

- (a) the Client warrants that it owns the property on which the Goods are to be constructed and/or delivered, and/or has possession of the property and the absolute rights to authorise and enter into this contract. The Client indemnifies BJL against any Claim for Damages, loss, cost or harm that may be suffered by BJL as a result of BJL entering into this contract and supplying the Goods where the Client is not so entitled or authorised; and
- (b) the Client must advise BJL if there are any special or unusual conditions that apply to the site, or access to the site, prior to construction of the Goods and/or Delivery. Where any additional costs are incurred by BJL as a result of any special or unusual conditions that apply to the site, such additional costs shall be treated as a variation and charged to the Client in accordance with clause 6.4.

9.4 Where there has been a delay in the construction of the Goods through no fault of BJL, the parties acknowledge that BJL may have scheduled other projects and accordingly the date for Delivery shall be extended to such an extent as occasioned as a result of the delay and other scheduled commitments.

10. Delivery

10.1 Delivery of the Goods, including transportation, storage, insurance, installation or otherwise ("Delivery"), is taken to occur at the time that:

- (a) the Client (or the Client's nominated carrier) takes possession of the Goods at BJL' premises; or
- (b) BJL (or BJL's nominated carrier) delivers the Goods to, and/or constructs the Goods at, the Client's nominated site, even if the Client is not present at the site, and:
 - (i) BJL shall be deemed as acting as the Client's agent and is expressly authorised to give such instructions to any persons as BJL considers necessary for Delivery; and
 - (ii) the Client shall have no Claim for Damages, and indemnifies BJL in respect thereof, and for any Claim for Damages made by any persons against BJL, arising directly or indirectly out of any instructions from BJL to any persons pursuant to sub-clause (i), or any advice and/or

products and/or services provided by any persons to BJL or the Client; and

(iii) BJL shall be entitled to charge an amount equal to fifteen (15%) of the costs of Delivery as an agency fee.

10.2 At BJL's sole discretion, the cost of Delivery is either included in, or is in addition to, the Price.

10.3 The Client must take Delivery, by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery, as arranged, then BJL shall be entitled to charge a reasonable fee for redelivery and/or storage.

10.4 Any time or date given by BJL to the Client is an estimate only. The Client must still accept Delivery, even if late, and BJL will not be liable for any Claim for Damages as a result of Delivery being late.

10.5 The Client shall ensure that BJL has clear and free access to the nominated site at all times to enable them to deliver the Goods, including ensuring that access is suitable to accept the weight of laden trucks. BJL shall not be liable for any loss or damage to the site (including, without limitation, damage caused by vibration and damage to furniture, fittings/fixtures, pathways, driveways and concreted or paved or grassed areas, and/or any weakening of any support) unless due to the negligence of BJL, and the Client agrees to indemnify BJL against all costs incurred by BJL in recovering such vehicles in the event they become bogged or otherwise immovable.

11. Safety and Access

11.1 The Client must advise BJL, prior to acceptance of BJL' quotation, if attendance by BJL, its employees, agents and/or subcontractor at site safety induction courses is necessary. Where any additional costs are incurred by BJL as a result of attendance by BJL, its employees, agents and/or subcontractors at the site safety induction courses, such additional costs shall be treated as a variation and charged to the Client in accordance with clause 6.

11.2 The Client acknowledges that there may be hazards arising from the Services and that access to the Services by the Client must be made in the presence, and with the consent, of BJL. The Client indemnifies BJL in respect of any Claim for Damages as a result of the Client's (or any third party's) access to the Services. The Client agrees to comply with all of BJL's health and safety policies in place from time to time.

12. Additions or Alterations

12.1 Where the Services involve additions or alterations to an existing building or structure then the following shall apply:

- (a) BJL shall not be liable for any loss or damage suffered by the Client in relation to the Services where such loss or damage results from the state or condition of the existing building or structure which could not reasonably have been foreseen by BJL during the course of the Services; and
- (b) BJL will use reasonable endeavours to match the Goods to existing materials. However, BJL shall not be liable for any difference in the Goods and old materials; and
- (c) where, as a result of opening up any part of the existing building or structure to carry out the Services, any additional or altered work is required or requested due to non-standard construction or any substandard timber or other materials, or because any materials are required to be removed or replaced to carry out the Services, then the cost of any additional or altered work shall be borne by the Client and treated as a variation and charged in accordance with clause 6.

13. Insurance

13.1 The Client is responsible for arranging adequate insurance for the Services and that part of the Client's existing structure made available to enable performance of the Services. In the event that the Client fails to obtain such insurance for any reason, the Client indemnifies BJJ in respect of any Claim that could have been made and covered by such insurance.

14. Client's Responsibilities

14.1 The Client is responsible for providing a clear vertical height of 11 metres for truck rigs, a clear vertical height of 6 metres for tractor rigs and a clear distance of 4 metres to any power lines. If these distances and/or heights are not achievable, the Client must notify BJJ before Delivery and the parties shall then consult about any available alternative methodologies for the supply of the Goods, and any additional costs shall be borne by the Client and charges as a variation pursuant to clause 6.4. BJJ retains absolute discretion to cancel this contract if the required clearances are not available and in such case, the Client shall have no Claim for Damages arising out of any such cancellation.

14.2 Where the Client intends to engage its own contractors for work that directly, or indirectly, affects the Services, or carry out any work themselves that directly, or indirectly, affects the Services, then the following provisions shall apply:

- (a) the Client must ensure that such work is carried out within the timeframes specified by BJJ; and
- (b) the Client must ensure that such work is carried out to a good standard and in accordance with any relevant laws and industry standards; and
- (c) If the Client fails to meet its obligations under sub-clauses (a) and (b), then BJJ is entitled to remediate and/or arrange for such work to be carried out itself and shall be entitled to recover the costs of such as a variation in accordance with clause 6.4, provided that BJJ first gives twenty-four (24) hours' notice of its intention to undertake such work.

15. Risk

15.1 Risk of damage to or loss or deterioration of the Goods passes to the Client (and the Client must insure the Goods on, or before, this date):

- (a) where the Goods are constructed at BJJ's premises:
 - (i) on such date as the Client is advised by the Client that the Goods are available for collection; or
 - (ii) where BJJ has agreed to deliver the Goods, on the date of Delivery.
- (b) where the Goods are constructed at the Client's nominated site, on completion of the construction of the Goods.

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

15.3 If the Client requests BJJ to leave Goods outside BJJ's premises for collection, or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.

16. Sub-Contractors and Consultants

16.1 BJJ may, acting solely as agent on behalf of the Client, engage third-party sub-contractors and consultants considered necessary by BJJ for the purpose of supplying the Goods and/or ensuring that the Goods requested by the Client will meet the Client's reason-

able performance expectations, to which the following shall apply:

- (a) BJJ shall be expressly authorised to give such instructions to any third party as BJJ considers necessary; and
- (b) BJJ shall be under no duty, obligation or expectation to engage such third parties, and BJJ makes no representations as to the need or desirability therefor. The Client indemnifies BJJ against any failure by BJJ to engage any third parties; and
- (c) the parties acknowledge that third parties may have been engaged prior to entry into this contract. Unless BJJ has confirmed in writing to the Client that the third party is engaged directly by BJJ, and not as the Client's agent, any such third party shall be deemed to be the Client's agent and the provisions of clauses 6.5 and this clause 16 shall apply. Where any third party is engaged directly by BJJ prior to entry into this contract, this clause 16 shall apply regardless.
- (d) the Client shall be required to pay the third parties directly, and BJJ may (at BJJ's sole discretion) make such payment on behalf of the Client, in which case such payment shall be a debt due and owing from the Client to BJJ and may be charged by BJJ as a variation to the Price (together with an agency fee equal to fifteen percent (15%) of the cost of the products and/or services provided by the third party); and
- (e) the Client shall have no Claim for Damages, and indemnifies BJJ in respect of any Claims or Damages, arising directly or indirectly out of any instructions from BJJ to any third party, any Claims or Damages by the third party against BJJ, and any Claims or Damages arising directly or indirectly out of any advice, products and/or services provided by the third party to BJJ or the Client.

17. Title

17.1 BJJ and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid BJJ all amounts owing to BJJ; and
- (b) the Client has met all of its other obligations to BJJ.

17.2 Receipt by BJJ 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, and until then BJJ's rights and ownership in relation to the Goods, and this contract, shall continue.

17.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 17.1:

- (a) the Client is only a bailee of the Goods and must return the Goods to BJJ on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for BJJ and must pay to BJJ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for BJJ and must pay or deliver the proceeds to BJJ on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of BJJ and must sell, dispose of or return the resulting product to BJJ as it so directs.
- (e) the Client irrevocably authorises BJJ to enter any premises where BJJ believes the Goods are kept and recover possession of the Goods. BJJ shall be entitled to sell the Goods by any means considered fit by BJJ, and apply the proceeds of sale in reduction of any amounts owing from the Client to BJJ.
- (f) BJJ may recover possession of any Goods in transit, whether or not Delivery has occurred.

(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of BJJ.

(h) BJJ may commence proceedings to recover the Price, notwithstanding that ownership of the Goods has not passed to the Client.

18. Personal Property Securities Act 1999 ("PPSA")

18.1 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 any monetary obligation of the Client to BJJ for Services, that have previously been supplied (if any), and that will be supplied in the future, by BJJ to the Client.

18.2 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 BJJ may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

(b) indemnify, and upon demand reimburse, BJJ for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of BJJ; and

(d) immediately advise BJJ 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.

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

18.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

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

18.6 The Client shall unconditionally ratify any actions taken by BJJ under clauses 18.1 to 18.5.

19. Security and Charge

19.1 In consideration of BJJ agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, 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).

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

19.3 The Client irrevocably appoints BJJ and each director of BJJ as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 19 including, but not limited to, signing any document on the Client's behalf.

20. Defects

20.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of such time (being of the essence) notify BJJ of any alleged defect, shortage in quantity, damage or failure to comply with the description or quotation. The Client shall afford BJJ an opportunity to inspect the Goods within a reasonable time following such notification 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 BJJ has agreed in writing that the Client is entitled to reject, BJJ's liability is limited to either (at BJJ's discretion) replacing the Goods or repairing the Goods.

20.2 Goods will not be accepted for return other than in accordance with 20.1 above.

21. Intellectual Property

21.1 The Client and BJJ agree that BJJ retains ownership of any designs, plans, specifications, programmes or working files for which BJJ has created for the Client.

21.2 Any designs, sketches, plans, specifications, test copies or any Goods developed by BJJ on a speculative basis will remain the property of BJJ and may not be used by anyone except with the prior written consent of BJJ.

21.3 The Client warrants that it is entitled to the intellectual property of all designs, specifications, instructions, documents and/or information provided to BJJ, and that such will not cause BJJ to infringe any patent, registered design or trademark in the execution of the Client's order, and the Client agrees to indemnify BJJ against any Claim taken by a third party against BJJ in respect of any such infringement.

21.4 The Client agrees that BJJ may (at no cost) use for the purposes of marketing or entry into any competition, any plans, specifications and photographs relating to the Goods.

22. Confidentiality

22.1 The Client agrees to keep all information regarding this contract, and any business transacted between the Client and BJJ, strictly confidential and such information may only be disclosed to the Client's employees where disclosure of such information is strictly necessary for the purpose of enabling the employee to undertake its required duties, and to accounting and legal advisors for the sole purpose of providing professional advice and for which disclosure is reasonably necessary.

23. Default and Consequences of Default

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

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

23.3 Without prejudice to BJJ's other remedies at law, BJJ shall be entitled to cancel all, or any part, of any order of the Client which remains unfulfilled, and all amounts owing to BJJ shall, whether or not due for payment, become immediately payable if:

(a) any money payable to BJJ becomes overdue, or in BJJ'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 BJJ;

(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or

enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23.4 The Client acknowledges that it shall have no Claim for Damages against BJJ as a result of BJJ exercised its rights under clauses 17.3 and 23, and shall indemnify BJJ in respect of any Claim for Damages made by a third party against the Client or BJJ as a result of BJJ's exercise of such rights.

24. Cancellation

24.1 Without prejudice to any other remedies BJJ may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, BJJ may suspend the supply of Goods to the Client or cancel this contract.

24.2 BJJ may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice BJJ shall repay to the Client any money paid by the Client for the Goods. BJJ shall not be liable for Claim for Damages whatsoever arising from such cancellation.

24.3 In the event that the Client cancels this contract, or Delivery, the Client shall be liable for any and all loss incurred (whether direct or indirect) by BJJ as a direct result of the cancellation (including, but not limited to, any loss of profits).

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

25. Privacy Act 1993

25.1 The Client authorises BJJ (or BJJ's agent) to:

(a) access, collect, retain, use and supply to any external agency or party, any information about the Client:

(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of debt collection and credit reporting or assessment; or

(ii) for any purpose relating to BJJ's business (including, but not limited to, direct marketing)

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

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

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

26. Limitation of Liability

26.1 BJJ is entitled to rely on the accuracy of any plans, specifications or other information provided by the Client, and the Client shall have no Claim for Damages, and indemnifies BJJ, in respect of any Claim for Damages arising directly, or indirectly, out of such reliance by BJJ.

26.2 BJJ shall be under no liability whatsoever to the Client for any Claim for Damages arising out of a breach by BJJ of these terms and conditions (alternatively BJJ's liability shall be limited to Damages which under no circumstances shall exceed the Price).

26.3 Any Claim that could be made against BJJ howsoever arising must be made within six (6) years from the date of entry into this contract, and the parties agree that the provisions of the Limitation Act 2010 and any defences available shall be limited and/or modified accordingly.

26.4 The Client indemnifies and keeps BJJ indemnified against any and all Claims by third parties against BJJ for Damages arising out of Goods supplied by BJJ to the Client.

27. Notices

27.1 All notices under this contract must be in writing and either delivered by hand, or sent by email or post, to a contact address that has been provided by the relevant party. A notice is deemed to be received:

(a) if it is personally delivered, when delivered; or

(b) if it is posted, three (3) working days after posting; or

(c) if it is sent by email, when the email leaves the communications system of the sender, provided the sender:

(i) does not receive an error message relating to the sending of the email; or

(ii) receives confirmation that the email was delivered (which confirmation may include an automated delivery receipt from the communications system of the recipient).

27.2 Despite clause 27.1, any notice received after 5:00pm, or received on a day that is not a working day, is deemed not to have been received until 9:00am on the next working day.

28. Trusts

28.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not BJJ may have notice of the Trust, the Client covenants with BJJ 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;

(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.

(c) the Client will not without consent in writing of BJJ (BJJ 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;

(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 property.

29. General

29.1 In the event of any discrepancy between any quotation, estimate, the plans and specifications, and these terms and conditions, the discrepancy shall be determined in the following order of precedence:

(a) the quotation or estimate; and

(b) these terms and conditions; and

(c) the plans; and lastly

(d) the specifications.

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 subsequent-

ly 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 New Zealand.

29.4 It is intended that the Client is a legal entity. If that legal entity does not exist, the person(s) who accept(s) BJL's quotation will be personally liable for all amounts payable.

29.5 BJL 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 BJL.

29.7 BJL 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 BJL's sub-contractors without the authority of BJL.

29.8 The Client hereby disclaims any right to rescind, or cancel any contract with BJL or to Claim for Damages arising out of any inadvertent misrepresentation made to the Client by BJL and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

29.9 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by BJL to the Client.

29.10 The Client agrees that BJL reserves the right to review any of these terms and conditions at any time, and from time to time. If, following any such review, there are to be any changes to the terms and conditions, those changes will take effect in respect of any Goods ordered or estimated from the date on which BJL notifies the Client of such change and will be deemed accepted by the Client, in any un-amended form, by the Client making any request for the supply of Goods following the date of notification by BJL.

29.11 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.

29.12 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.

29.13 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).

29.14 These terms and conditions are to be read in conjunction with the conditions of sale supplied with all quotes.