

Kiwi Garage Doors Limited – Terms & Conditions of Trade

1.1	Definitions Contract 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.	changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practices. The Customer shall be liable for any loss incurred by KGD as a result of the Customer's failure to comply with this clause.	6.5	demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto. The Customer acknowledges and accepts that: (a) where KGD has performed temporary repairs that: (i) KGD offers no guarantee against the recurrence of the initial fault, or any further damage caused; and (ii) KGD will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required. (b) KGD is only responsible for components that are replaced by KGD and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure; and (c) salt, sulphur and similar elements may cause damage to the Materials and as such KGD shall not be held liable for any damage that may arise from the Materials being exposed to such elements due to the geographic location of the structure, atmospheric conditions or accidental exposure.
1.2	Cookies 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 Customer does not wish to allow Cookies to operate in the background when using KGD's website, then the Customer 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.			
1.3	Customer means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting KGD to provide the Works as specified in any proposal, quotation, order, invoice or other documentation; and (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and (d) includes the Customer's executors, administrators, successors and permitted assigns.			
1.4	Intended Use 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.			
1.5	KGD means Kiwi Garage Doors Limited, its successors and assigns.			
1.6	Non-Conforming Product means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building: (a) the product is not, or will not be, safe; or (b) does not, or will not, comply with the relevant regulatory provisions; or (c) 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.			
1.7	Price means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between KGD and the Customer in accordance with clause 6 below.			
1.8	Works means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by KGD to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).			
1.9	Worksite means the address nominated by the Customer to which the Materials are to be supplied by KGD.			
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 any Works.			
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.			
2.3	Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.			
2.4	The Customer acknowledges and accepts that: (a) the supply of Works on credit shall not take effect until the Customer has completed a credit application with KGD and it has been approved with a credit limit established for the account; (b) in the event that the supply of Works requested exceeds the Customer's credit limit and the Customer exceeds the payment terms, KGD reserves the right to refuse delivery; and (c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, KGD reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases KGD will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Works on hold, as per clause 7.2 until such time as KGD and the Customer agree to such changes.			
2.5	Any advice, recommendation, information, assistance or service provided by KGD in relation to Materials or Works supplied is given in good faith to the Customer, or the Customer's agent and is based on KGD's own knowledge and experience and shall be accepted without liability on the part of KGD. Where such advice or recommendations are not acted upon then KGD shall require the Customer or their agent to authorise commencement of the Works in writing. KGD shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.			
2.6	The Customer must notify KGD in writing at the time of ordering, any modifications to the garage floor area or ceiling such as tiling, concreting, false ceiling etc.			
2.7	Where the Customer is a tenant (and therefore not the owner of the land and premises where Works are to be carried out) then the Customer warrants that they have obtained the full consent of the owner for KGD to carry out the Works on the owner's land and premises. The Customer 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 KGD against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by KGD, except where such claim has arisen because of the negligence of KGD when undertaking the Works. Furthermore, the Customer agrees that they shall, upon request from KGD, provide evidence that: (a) they are the owner of the land and premises upon which the Works are to be undertaken; or (b) where they are a tenant, that they have the consent of the owner for the Works to be carried out on the land and premises.			
2.8	The Customer acknowledges and understands that (subject to clause 6.2), call-outs shall be charge on the following basis: (a) during normal business hours; (i) a minimum of one hour's labour and any Materials used during the course of the Works; plus (ii) travel costs. (b) after hours (including, but not limited to, weekends and/or Public Holidays); (i) a minimum of two (2) hours' labour and any Materials used during the course of the Works; and (ii) travel costs.			
2.9	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22B 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.	Authorised Representatives			
3.1	Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to KGD as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Materials or Works on the Customer's behalf and/or to request any variation to the Works on the Customer's behalf with such authority to continue until all requested Works have been completed or the Customer otherwise notifies KGD in writing that said person is no longer the Customer's duly authorised representative).			
3.2	In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise KGD in writing of the parameters of the limited authority granted to their representative.			
3.3	The Customer specifically acknowledges and accepts that they will be solely liable to KGD for all additional costs incurred by KGD (including KGD's profit margin) in providing any Works, Materials, services or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).			
4.	Errors and Omissions			
4.1	The Customer acknowledges and accepts that KGD 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 KGD in the formation and/or administration of this Contract; and/or (b) contained in any literature (hard copy and/or electronic) supplied by KGD in respect of the Works.			
4.2	In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of KGD, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.			
5.	Change in Control			
5.1	The Customer shall give KGD 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,			
6.1	Price and Payment All KGD's sole discretion the Price shall be either: (a) as indicated on invoices provided by KGD to the Customer in respect of Works performed or Materials supplied; or (b) KGD's estimated Price (subject to clause 6.2). The final Price can only be ascertained upon completion of the Works. Variances in the estimated Price of more than 10% will be subject to Customer approval before proceeding with the Works; or (c) KGD's quoted Price (subject to clause 6.2) which shall be binding upon KGD provided that the Customer shall accept KGD's quotation in writing within sixty (60) days. KGD reserves the right to change the Price: (a) if a variation to the Materials which are to be supplied is requested; or (b) if a variation to the Works originally scheduled (including any applicable claims of specialisation) is required; or (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or (d) in the event that overseas transactions increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges or increases to KGD in cost of labour or materials which are beyond KGD's control.			
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7.	Provision of the Works Subject to clause 7.2 it is KGD's responsibility to ensure that the Works start as soon as possible and that the Works are completed by the date specified in the Customer's order. The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that KGD claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond KGD's control, including but not limited to any failure by the Customer to: (a) make a selection; (b) have the Worksite ready for the Works; or (c) notify KGD that the Worksite is ready. At KGD's sole discretion, the cost of delivery is in addition to the Price. KGD may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Any time specified by KGD for delivery of the Works is an estimate only and KGD will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that KGD is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then KGD shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.			
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8.	Risk If KGD retains ownership of the Materials under clause 13 then: (a) where KGD is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either: (i) the Customer or the Customer's nominated carrier takes possession of the Materials at KGD's address; or (ii) the Materials are delivered by KGD or KGD's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address); (b) where KGD is to both supply and install Materials then KGD shall maintain a Contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer. Notwithstanding the provisions of clause 8.1 if the Customer specifically requests KGD to leave Materials outside KGD's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense. KGD shall be entitled to rely on the accuracy of any plans, specifications and other information (such as floor levels, lintel heights or opening sizes) provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, KGD accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. Where KGD is required to install the Materials the Customer warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and KGD shall not be liable for any claims,			
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9.	Timber Clauses Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst KGD will make every effort to match sales samples to the finished Materials KGD accepts no liability whatsoever where such samples differ to the finished Materials supplied. The Customer acknowledges and accepts that: (a) the finish, texture, colour of painted or stained products may not vary from sales samples. KGD accepts no liability whatsoever where such variation may occur; (b) timber is a hygroscopic material subject to expansion and contraction; therefore, KGD will accept no responsibility for gaps that may appear in the doors during prolonged dry periods; and (c) Materials may: (i) fade or change colour over time; (ii) expand, contract or distort as a result of exposure to heat, cold, weather; (iii) mark or stain if exposed to certain substances; and (iv) be damaged or disfigured by impact or scratching. All raw products are required to be painted, stained, or fully sealed immediately after installation. The Customer shall not hold KGD responsible for the finished state of the products if the Customer fails to finish the raw products immediately or if at all, nor if the Customer fails to apply products to paint or stain, or seal the doors without following the instructions applicable to such products or the suitability of those products for the purpose required.			
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10.	Worksite Access and Condition KGD is not responsible for the removal of rubbish (including but not limited to 'old doors') from or clean-up of the building/construction Worksite/s. All rubbish generated by KGD will be placed in a designated area appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent unless otherwise agreed. It is the responsibility of KGD and agreed by the Customer that: (a) the Customer shall ensure that KGD has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). KGD shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways, lawns or paved or grassed areas) unless due to the negligence of KGD; (b) it is the Customer's responsibility to provide KGD, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.			
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11.	Underground Locations Prior to KGD commencing any work the Customer must advise KGD of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and 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 the Worksite. Whilst KGD will take all care to avoid damage to any underground services the Customer agrees to indemnify KGD 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.			
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12.	Compliance with Laws The Customer and KGD shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating to any other relevant safety standards or legislation pertaining to the Works. Both parties acknowledge and agree: (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Works; and (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable. Where the Customer has supplied products for KGD to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in KGD's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with the applicable regulations, then KGD shall be entitled, without prejudice, to halt the Works until the appropriate conforming 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. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works. If applicable, all work will be tested to ensure that it is electrically safe and 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. Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the 'HSW Act'), KGD agrees at all times to comply with sections 28 and 29 of the HSW Act, with meeting their obligations for health and safety laws 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 Customer who has engaged a third party head contractor.			
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13.	Title KGD and the Customer agree that ownership of the Materials shall not pass until: (a) the Customer has paid KGD all amounts owing to KGD; and (b) the Customer has met all of its other obligations to KGD.			
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Please note that a larger print version of these terms and conditions is available from KGD on request.

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<p>13.2 Receipt by KGD 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.</p> <p>13.3 It is further agreed that:</p> <p>(a) until ownership of the Materials passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to KGD on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for KGD and must pay to KGD the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;</p> <p>(c) the production of these terms and conditions by KGD shall be sufficient evidence of KGD's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with KGD to make further enquiries;</p> <p>(d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for KGD and must pay or deliver the proceeds to KGD on demand;</p> <p>(e) the Customer should not convert or process the Materials 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 KGD and must sell, dispose of or return the resulting product to KGD as it so directs;</p> <p>(f) unless the Materials have become fixtures the Customer irrevocably authorises KGD to enter any premises where KGD believes the Materials are kept and recover possession of the Materials;</p> <p>(g) KGD may recover possession of any Materials in transit whether or not delivery has occurred;</p> <p>(h) the Customer shall not charge or grant an encumbrance over the Materials nor grant or otherwise give any interest in the Materials that they remain the property of KGD; and</p> <p>(i) KGD may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.</p> <p>14. Personal Property Securities Act 1999 ("PPSA")</p> <p>14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by KGD to the Customer and the proceeds from such Materials as listed by KGD to the Customer's invoices rendered from time to time.</p> <p>14.2 The Customer undertakes to:</p> <p>(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 KGD may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, KGD for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of KGD; and</p> <p>(d) immediately advise KGD 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.</p> <p>14.3 KGD and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.</p> <p>14.5 Unless otherwise agreed to in writing by KGD, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>14.6 The Customer shall unconditionally ratify any actions taken by KGD under clause 14.1 to 14.5.</p> <p>14.7 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.</p> <p>15. Security and Charge</p> <p>15.1 In consideration of KGD agreeing to supply the Works, 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, and the Customer grants a security interest in all of its present and after-acquired property, 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). The terms of charge and the security interest are the terms of Memorandum 2018/4344 registered pursuant to s.208 of the Land Transfer Act 2017.</p> <p>15.2 The Customer indemnifies KGD from and against all KGD's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising KGD's rights under this clause.</p> <p>15.3 The Customer irrevocably appoints KGD and each director of KGD as the Customer's true and lawful attorney/s 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 Customer's behalf.</p> <p>16. Defects and Returns</p> <p>16.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify KGD of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford KGD an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which KGD has agreed in writing that the Customer is entitled to reject, KGD's liability is limited to either (at KGD's discretion) replacing the Materials or repairing the Materials.</p> <p>16.2 Returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 16.1; and</p> <p>(b) KGD has agreed in writing to accept the return of the Materials; and</p> <p>(c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and</p> <p>(d) KGD will not be liable for Materials which have not been stored or used in a proper manner; and</p> <p>(e) the Materials 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.</p> <p>16.3 KGD may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.</p> <p>16.4 Returned Materials may (at KGD's sole discretion), incur restocking and handling fees.</p> <p>16.5 Subject to clause 16.1, non-stocklist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.</p> <p>17. Warranties</p> <p>17.1 Subject to the conditions of warranty set out in clause 17.2 KGD warrants that if any defect in any Materials manufactured or Works provided by KGD becomes apparent and is reported to KGD within five (5) years of the date of delivery (time being of the essence) then KGD will either (at KGD's sole discretion) replace or remedy the defect.</p> <p>17.2 The conditions applicable to the warranty given by clause 17.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) failure on the part of the Customer to properly maintain any Materials or serviced item; or</p> <p>(ii) failure on the part of the Customer to follow any instructions or guidelines provided by KGD; or</p> <p>(iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or</p> <p>(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</p> <p>(v) fair wear and tear, any accident or act of God.</p> <p>(b) the warranty shall cease and KGD shall thereafter in no circumstances be liable under the terms of the warranty if the</p>	<p>workmanship is repaired, altered or overhauled without KGD's consent.</p> <p>(c) in respect of all claims KGD 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.</p> <p>17.3 For Materials not manufactured by KGD, the warranty shall be the current warranty provided by the manufacturer of the Materials. KGD 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 Materials.</p> <p>17.4 In the case of second hand Materials, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by KGD as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. KGD shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.</p> <p>18. Consumer Guarantees Act 1993</p> <p>18.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Materials by KGD to the Customer.</p> <p>19. Intellectual Property</p> <p>19.1 Where KGD has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in KGD, and shall only be used by the Customer at KGD's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of KGD.</p> <p>19.2 The Customer warrants that all designs, specifications or instructions given to KGD will not cause KGD to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify KGD against any action taken by a third party against KGD in respect of any such infringement.</p> <p>19.3 The Customer agrees that KGD may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which KGD has created for the Customer.</p> <p>20. Default and Consequences of Default</p> <p>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 KGD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>20.2 If the Customer owes KGD any money the Customer shall indemnify KGD from and against all costs and disbursements incurred by KGD in recovering the debt (not limited to internal administration fees, legal costs on a solicitor and own client basis, KGD's collection agency costs, and bank disbursement fees).</p> <p>20.3 Further to any other rights or remedies KGD may have under this Contract, if a Customer has made payment to KGD, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by KGD under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.</p> <p>20.4 Without prejudice to KGD's other remedies at law KGD shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to KGD shall, whether or not due for payment, become immediately payable:</p> <p>(a) any money payable to KGD becomes overdue, or in KGD's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by KGD;</p> <p>(c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors or makes an assignment for the benefit of creditors;</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>21. Cancellation</p> <p>21.1 Without prejudice to any other rights or remedies KGD may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice(s)) then KGD may suspend or terminate the supply of the Works. KGD will not be liable to the Customer for any loss or damage the Customer suffers because KGD has exercised its rights under this clause.</p> <p>21.2 KGD may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice KGD shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to KGD for Works already performed. KGD shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>21.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by KGD as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>21.4 Cancellation of orders for products 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.</p> <p>22. Privacy Policy</p> <p>22.1 All emails, documents, images or other recorded information held or used by KGD is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. KGD 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. KGD acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by KGD that may result in serious harm to the Customer, KGD will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.</p> <p>22.2 Notwithstanding clause 22.1, privacy limitations will extend to KGD in respect of Cookies where the Customer utilises KGD's website to make enquiries. KGD 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 Customer's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to KGD when KGD sends an email to the Customer, so KGD may collect and review that information ("collectively Personal Information").</p> <p>22.3 If the Customer consents to KGD's use of Cookies on KGD's website and later wishes to withdraw that consent, the Customer may manage and control KGD's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>(a) The Customer authorises KGD or KGD's agent to:</p> <p>(i) access, collect, retain and use any information about the Customer; (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 contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Customer.</p> <p>(b) disclose information about the Customer, whether collected by KGD from the Customer directly or obtained by KGD 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 details by the Customer.</p> <p>22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.</p> <p>22.5 The Customer shall have the right to request (by e-mail) from KGD, a copy of the Personal Information about the Customer retained by KGD and the right to request that KGD correct any incorrect Personal Information.</p> <p>22.6 KGD will destroy Personal Information upon the Customer's request (by e-mail) and no longer retained, unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>22.7 The Customer can make a privacy complaint by contacting KGD via e-mail. KGD will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz.</p> <p>23. Suspension of Works</p> <p>23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:</p> <p>(a) KGD 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:</p> <p>(i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or</p> <p>(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</p> <p>(iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to KGD by a particular date; and</p> <p>(iv) KGD has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.</p> <p>(b) if KGD suspends work, it:</p> <p>(i) is not in breach of this Contract; and</p> <p>(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</p> <p>(iii) is entitled to an extension of time to complete the Contract; and</p> <p>(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.</p> <p>(c) if KGD exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to KGD under the Contract and Commercial Law Act 2017; or</p> <p>(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 KGD suspending work under this provision;</p> <p>(d) due to any act or omission by the Customer, the Customer effectively precludes KGD from continuing the Works or performing or completing the Works under this Contract, then KGD may, without prejudice to KGD's other rights and remedies, KGD may suspend the Works immediately after serving on the Customer 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 KGD as a result of such suspension and recommencement shall be payable by the Customer as if they were its variation.</p> <p>23.2 If pursuant to any right conferred by this Contract, KGD suspends the Works and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, KGD shall be entitled to terminate the Contract, in accordance with clause 21.</p> <p>24. Service of Notices</p> <p>24.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(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;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>25. Trusts</p> <p>25.1 If the Customer 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 KGD may have notice of the Trust, the Customer covenants with KGD that:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund; the Customer 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 Customer against the Trust or the trust fund. The Customer 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;</p> <p>(c) the Customer will not without consent in writing of KGD (KGD will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>26. General</p> <p>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 or its replacement(s).</p> <p>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.</p> <p>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 Tauranga Courts of New Zealand.</p> <p>26.4 Subject to the CGA, KGD 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 KGD of these terms and conditions (alternatively KGD's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).</p> <p>26.5 KGD may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.</p> <p>26.6 The Customer cannot licence or assign without the written approval of KGD.</p> <p>26.7 KGD 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. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of KGD's sub-contractors without the authority of KGD.</p> <p>26.8 The Customer agrees that KGD may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for KGD to provide Works to the Customer.</p> <p>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), ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to KGD.</p> <p>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.</p>
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