

Blackwire Electrical Services Limited - Terms and Conditions of Trade

1. DEFINITIONS

1.1 "BESL" means Blackwire Electrical Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Blackwire Electrical Services Limited

1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting BESL to provide the Works 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 "Works" means all Works or Materials supplied by BESL to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

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

2. ACCEPTANCE

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

2.2 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 BESL.

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

2.4 Any advice, recommendation, information, assistance or service provided by BESL in relation to the Works and/or Materials supplied is given in good faith, is based on BESL's own knowledge and experience and shall be accepted without liability on the part of BESL, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Works and/or Materials.

3. AUTHORISED REPRESENTATIVES

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

4. ERRORS AND OMISSIONS

4.1 The Client acknowledges and accepts that BESL 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 BESL in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by BESL 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 BESL; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5. CHANGE IN CONTROL

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

6. PRICE AND PAYMENT

6.1 At BESL's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by BESL to the Client in respect of Works performed or Materials supplied; or
- (b) BESL's quoted Price (subject to clause 6.2) which shall be binding upon BESL provided that the Client shall accept BESL's quotation in writing within thirty (30) days.

6.2 BESL 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 plans or specifications) is requested; or
- (c) where additional Works are required or delays occur due to the discovery of hidden or unidentifiable difficulties (including, but not limited to inclement weather conditions, limitations to site accessibility, safety considerations and/or health hazards (such as the discovery of asbestos), prerequisite work by any third party not being completed, obscured building defects, hidden wiring in walls, or hard rock barriers etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to BESL in the cost of labour or materials which are beyond BESL's control.

6.3 Variations will be charged for on the basis of **BESL's** quotation, and will be detailed in writing, and shown as variations on **BESL's** invoice. The Client shall be required to respond to any variation submitted by **BESL** within five (5) working days. Failure to do so will entitle **BESL** to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

6.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by **BESL**, which may be:
(a) by way of progress payments in accordance with **BESL's** specified progress payment schedule. Such progress payment claims may include the reasonable value of authorized variations and the value of any Materials delivered to the worksite but not yet installed;
(b) for certain approved Client's, due twentieth (20th) day of the month following the date of invoice;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by **BESL**.

6.5 Payment may be made by bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and **BESL**.

6.6 No allowance has been included within the quotation for Works to be carried out outside of **BESL's** normal working hours.

6.7 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Monies applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.

6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by **BESL** nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to **BESL** an amount equal to any GST **BESL** must pay for any supply by **BESL** under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. PROVISION OF THE WORKS

7.1 Subject to clause 7.2 it is **BESL's** responsibility to ensure that the Works start as soon as it is reasonably possible.

7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that **BESL** claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond **BESL's** control, including but not limited to any failure by the Client to:

- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify **BESL** that the site is ready.

7.3 **BESL** 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.

7.4 Any time specified by **BESL** for delivery of the Works is an estimate only and **BESL** will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that **BESL** is unable to supply the Works as agreed solely due to any action or inaction of the Client, then **BESL** shall be entitled to charge a reasonable fee for resupplying the Works at a later time and date, and/or for storage of the Materials.

8. RISK

8.1 If **BESL** retains ownership of the Materials under clause 11 then:

- (a) where **BESL** is to both supply and install Materials, all risk for the Materials shall immediately pass to the Client on delivery and the Client 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 Client or the Client's nominated carrier takes possession of the Materials at **BESL's** address; or
 - (ii) the Materials are delivered by **BESL** or **BESL's** nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address). At **BESL's** sole discretion, the cost of delivery is included in the Price;

8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests **BESL** to leave Materials outside **BESL'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 Client and it shall be the Client'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 Client's expense.

8.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) **BESL** reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then **BESL** shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until **BESL** is satisfied that it is safe for the installation to proceed. **BESL** may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.

8.4 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify **BESL** against any costs incurred by **BESL** as a consequence of such discovery.

8.5 **BESL** shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against **BESL's** recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to **BESL**. Accordingly, **BESL** offers no warranty in regards to the aforementioned.

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

8.7 Where the Client has supplied materials for **BESL** to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. **BESL** shall not be responsible for any defects in the materials, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

8.8 The Client acknowledges that **BESL** is only responsible for Materials that are replaced/supplied by **BESL**, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify **BESL** against any loss or damage to the Works, or caused by the goods, or any part thereof howsoever arising.

8.9 **BESL** accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with **BESL**'s and/or the manufacturers' recommendations.

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

8.11 The Client acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in **BESL**'s fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.

8.12 Where **BESL** requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply **BESL** a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

8.13 The Client warrants that no other tradesmen interfere with any Works and/or Materials supplied under this contract. **BESL** shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.

8.14 **BESL** accepts no responsibility for:

- (a) any damage or defects in any Materials caused by movement and/or interference the said Materials;
- (b) painting, re-decorating, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.

8.15 The Client acknowledges that they shall:

- (a) not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party;
- (b) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable **BESL** to carry out the Works;
- (c) provide and have erected scaffolding to enable the Works to be undertaken (where in **BESL**'s opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed;
- (d) remove any furniture or personal items from the vicinity of the Works, and agrees that **BESL** shall not be liable for any damage caused to those items through the Client's failure to comply with this clause;
- (e) be wholly responsible for animals and/or children on the worksite;
- (f) be wholly responsible for the removal of rubbish from or clean-up of the worksite;
- (g) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.

9. ACCESS

9.1 The Client shall ensure that **BESL** has clear and free access to the work site at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Materials). **BESL** shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of **BESL**.

9.2 The Client agrees to be present at the worksite when and as reasonably requested by **BESL** and its employees, contractors and/or agents.

10. UNDERGROUND LOCATIONS

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

10.2 Whilst **BESL** will take all care to avoid damage to any underground services the Client agrees to indemnify **BESL** 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 10.1.

11. COMPLIANCE WITH LAWS

11.1 The Client **BESL** 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 guidelines and the Health and Safety at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.

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

11.3 **BESL** has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, **BESL** shall not be the person who controls the place of work in terms of the HSW Act.

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

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

12. TITLE

12.1 **BESL** and the Client agree that ownership of the Materials shall not pass until:

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

12.2 Receipt by **BESL** of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

12.3 It is further agreed that:

- (a) until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to **BESL** on request.
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for **BESL** and must pay to **BESL** the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by **BESL** shall be sufficient evidence of **BESL's** rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with **BESL** to make further enquiries.
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for **BESL** and must pay or deliver the proceeds to **BESL** on demand.
- (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of **BESL** and must sell, dispose of or return the resulting product to **BESL** as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises **BESL** to enter any premises where **BESL** believes the Materials are kept and recover possession of the Materials.
- (g) **BESL** may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of **BESL**.
- (i) **BESL** may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

13. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA ")

13.1 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 Materials and/or collateral (account) – being a monetary obligation of the Client to **BESL** for Works – that have previously been supplied and that will be supplied in the future by **BESL** to the Client.

13.2 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 **BESL** may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, **BESL** 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;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of **BESL**; and
- (d) immediately advise **BESL** 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.

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

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

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

13.6 The Client shall unconditionally ratify any actions taken by **BESL** under clauses 13.1 to 13.5.

14. SECURITY AND CHARGE

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

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

14.3 The Client irrevocably appoints **BESL** and each director of **BESL** as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause

14 including, but not limited to, signing any document on the Client's behalf.

15. DEFECTS AND RETURNS

15.1 The Client shall inspect the Materials on delivery and shall within three (3) days of delivery (time being of the essence) notify **BESL** of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford **BESL** an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which **BESL** has agreed in writing that the Client is entitled to reject, **BESL's** liability is limited to either (at **BESL's** discretion) replacing the Materials or repairing the Materials.

15.2 Returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 15.1; and
- (b) **BESL** has agreed in writing to accept the return of the Materials; and
- (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) **BESL** will not be liable for Materials which have not been stored or used in a proper manner; and
- (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.

15.3 Returned Materials may (at **BESL's** sole discretion), incur restocking and handling fees.

15.4 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

16. WARRANTIES

16.1 Subject to the conditions of warranty set out in clause 16.2 **BESL** warrants that if any defect in any workmanship of **BESL** becomes apparent and is reported to **BESL** within twelve (12) months of the date of delivery (time being of the essence) then **BESL** will either (at **BESL's** sole discretion) replace or remedy the workmanship.

16.2 The conditions applicable to the warranty given by clause 16.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Materials; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by **BESL**; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and **BESL** shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without **BESL's** consent.
- (c) in respect of all claims **BESL** shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim

16.3 For Materials not manufactured by **BESL**, the warranty shall be the current warranty provided by the manufacturer of the Materials. **BESL** 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.

17. CONSUMER GUARANTEES ACT 1993

17.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by **BESL** to the Client.

18. INTELLECTUAL PROPERTY

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

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

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

19. DEFAULT AND CONSEQUENCES OF DEFAULT

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two percent (2.0%) per calendar month (and at **BESL's** sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

19.3 Further to any other rights or remedies **BESL** may have under this contract, if a Client has made payment to **BESL**, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by **BESL** under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

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

- (a) any money payable to **BESL** becomes overdue, or in **BESL**'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 **BESL**;
- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. DISPUTE RESOLUTION

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

21. CANCELLATION

21.1 Without prejudice to any other remedies **BESL** may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions **BESL** may suspend or terminate the supply of Works to the Client. **BESL** will not be liable to the Client for any loss or damage the Client suffers because **BESL** has exercised its rights under this clause.

21.2 **BESL** 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 Client. On giving such notice **BESL** shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to **BESL** for Works already performed. **BESL** shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

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

22. CONSTRUCTION CONTRACTS ACT 2002

22.1 The Client hereby expressly acknowledges that:

- (a) **BESL** has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to **BESL** by a particular date; and
 - (iv) **BESL** has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if **BESL** suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if **BESL** exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to **BESL** under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of **BESL** suspending work under this provision.

23. PRIVACY ACT 1993

23.1 The Client authorises **BESL** or **BESL**'s agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by **BESL** from the Client directly or obtained by **BESL** 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.

23.2 Where the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.

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

24. SERVICE OF NOTICES

24.1 Any written notice given under this contract shall be deemed to have been given and received:

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

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

25. TRUSTS

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

26. GENERAL

26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

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

26.4 **BESL** may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

26.5 The Client cannot licence or assign without the written approval of **BESL**.

26.6 **BESL** 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 Client agrees and understands that they have no authority to give any instruction to any of **BESL**'s sub-contractors without the authority of **BESL**.

26.7 The Client agrees that **BESL** may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for **BESL** to provide Works to the Client.

26.8 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.

26.9 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.

27. PERSONAL GUARANTEE AND INDEMNITY BY DIRECTOR/S, SHAREHOLDER/S, TRUSTEE/S ETC

27.1 In consideration of **BESL** agreeing to supply Works and Materials and grant credit to the Client at the request of the director/s and/or shareholder/s and/or trustee/s and/or proprietor/s of the Client ("Guarantor/s") the Guarantor/s):

- (A) Guarantee to **BESL** the performance of and compliance by the Client of its obligations to **BESL** under these Terms and Conditions of Trade including the full payment of all invoices, disbursements and other amounts payable by the Client to **BESL**;
- (b) Indemnify **BESL** against any loss incurred by **BESL** directly or indirectly as a result of any failure by the Client to perform or comply with any of its obligations to **BESL** under these Terms and Conditions of Trade;
- (c) Unconditionally and irrevocably undertake that if for any reason the Client does not pay any amount under these Terms and Conditions of Trade when due, the Guarantor/s will pay the relevant amount upon demand in writing; and
- (d) Agree that as between the Guarantor/s and **BESL** (and without affecting the obligations of the Client) the Guarantor/s is/are liable under these Terms and Conditions of Trade as sole and principal debtor and not merely as surety and **BESL** shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor/s);
- (e) Agree that this guarantee may be registered on the Personal Property Securities Register as a general security against all present and after acquired property of the Guarantor/s and the terms of clause 13 shall apply to any such security to the extent applicable.

27.2 The Guarantor/s covenant/s to **BESL** that:

- (a) A transfer of **BESL**'s rights and obligations these Terms and Conditions of Trade and any variation of these Terms and Conditions of Trade will not release the Guarantor/s from liability under this clause 27;
- (b) The Guarantor/s liability pursuant to this clause 27 is joint several and unlimited;
- (c) No release, delay or waiver of **BESL**'s rights against the Client will release, prejudice or affect the liability of the Guarantor/s guarantor or as indemnifier pursuant to this clause 27; and
- (d) The Guarantor/s obligations and liabilities pursuant to this clause 27 are to remain in full force and effect until notified by **BESL** in writing.

27.3 The Guarantor/s acknowledge/s that:

- (a) It is recommended that the Guarantor/s obtain independent legal advice and that in the event that the Guarantor/s choose/s to sign the guarantee without obtaining such independent legal advice he/she/they waive such right by signing;
- (b) No representation, warranty or undertaking has been made by or on behalf of the **BESL** which is not expressly set out in these Terms and Conditions of Trade; and in deciding to give this guarantee, the Guarantor/s has/have not received or relied upon any advice given by or on behalf of **BESL**.