

# Canterbury Balustrade Limited – Terms and Conditions of Trade

- 1. Definitions**
- 1.1 "C.B.L." means Canterbury Balustrade Limited, its successors and assigns or any person acting on behalf of and with the authority of Canterbury Balustrade Limited.
- 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Works" means all Works or Materials supplied by C.B.L. 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 for the Works as agreed between C.B.L. and the Client in accordance with clause 5 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 the Works, pays the deposit and/or accepts provision of the Works.
- 2.2 These terms and conditions may only be amended with C.B.L.'s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and C.B.L.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002, 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 Client agrees that should the Client introduce any third party to C.B.L. as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Materials have been delivered, or the Client otherwise notifies C.B.L. in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative, as per clause 3.1, is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise C.B.L. in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to C.B.L. for all additional costs incurred by C.B.L. (including C.B.L.'s profit margin) in providing any Materials, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Change in Control**
- 4.1 The Client shall give C.B.L. not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by C.B.L. as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At C.B.L.'s sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by C.B.L. to the Client in respect of Works provided; or
  - (b) C.B.L.'s quoted Price (subject to clause 5.2) which shall be binding upon C.B.L. provided that the Client shall accept C.B.L.'s quotation in writing within thirty (30) days, unless withdrawn in writing. Unless stated in the quotation, no allowance has been made for:
    - (i) any obstructions such as rock, concrete, tree roots, broken posts or any other matter which may be encountered during the performance of the Works. An additional charge based on C.B.L.'s ruling hourly rates for labour plus the costs of hire of any necessary equipment will be made to cover the costs of drilling or removing of such obstructions;
    - (ii) the supply of electric power;
    - (iii) required painting not completed; or
    - (iv) scaffolding not in place (all scaffolding erected by either the Client or a contractor must at all times comply with industry safety standards and WorkSafe guidelines and that 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.
- 5.2 The Price is based upon a cleared and surveyed alignment of the site, where the site is not ready for C.B.L. to commence the Works on the agreed date and time which results in a returned visit by C.B.L., then an additional fee will apply in accordance with clause 6.4.
- 5.3 C.B.L. 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 required due to council's conditions; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather, limitations to accessing the site, obscured site defects (unseen obstructions), safety considerations, discovery of rot or a high water table, sub-strata, prerequisite work by any third party not being completed, the unavailability of required site utilities, hard rock barriers below the surface or iron reinforcing rods in concrete, etc.) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to C.B.L. in the cost of labour or Materials, which are beyond C.B.L.'s control.
- 5.4 Any variation, alteration or modification of the Works must be in writing and signed by the Client (or its legally authorised representative) and shall not be acceptable unless the Client's written authority to any agreed variation is received and agreed to in writing by C.B.L.
- 5.5 At C.B.L.'s sole discretion, a non-refundable deposit may be required prior to commencement of the Works.
- 5.6 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by C.B.L., which may be:
  - (a) prior to commencement of the Works;
  - (b) by way of progress payments in accordance with C.B.L.'s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed or whereby C.B.L. is instructed or required to store the Materials (subject to a fee as per clause 5.7), all progress payment claims remain due and payable when issued, unless otherwise agreed by both parties;
  - (c) for certain approved Client, due twenty (20) days following the end of the month in which a statement is emailed to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by C.B.L.
- 5.7 If delivery is delayed as a consequence of the Client's instructions, or lack thereof, or delay of agreed payment, then C.B.L. may at their sole discretion, store the Materials for the Client and the Client shall be liable for all storage costs charged or incurred by C.B.L. and in the event that the Materials are stored elsewhere all cartage charges incurred by C.B.L.
- 5.8 Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and C.B.L.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to C.B.L. an amount equal to any GST C.B.L. must pay for any supply by C.B.L. under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Works**
- 6.1 Subject to clause 6.2, it is C.B.L.'s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that C.B.L. claims an extension of time (by giving the Client notice) where completion is delayed by an event beyond C.B.L.'s control, including but not limited to, in the event of inclement weather and/or any event under clause 26.7, or any failure by the Client to:
  - (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify C.B.L. that the site is ready.
- 6.3 C.B.L. may provide the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time or date given by C.B.L. to the Client is an estimate only. C.B.L. shall not be liable for any loss or damage whatsoever due to failure by C.B.L. to provide the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of C.B.L. However both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that C.B.L. is unable to provide the Works as agreed solely due to any action or inaction of the Client then C.B.L. shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.
- 7. General Risk**
- 7.1 All risk for the Materials shall immediately pass to the Client on delivery and/or pickup; and
  - (a) the Client must insure the Materials on or before delivery;
  - (b) delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by C.B.L. or C.B.L.'s nominated carrier to the Client's nominated delivery site (even if the Client is not present at the site), including but not limited to, also where the Client or the Client's nominated carrier takes possession of the Materials at C.B.L.'s address.
- 7.2 The Client acknowledges:
  - (a) that Materials supplied may:
    - (i) exhibit variations in shade, colour, surface or finish, and may fade or change colour over time; and
    - (ii) mark or stain if exposed to certain substances; and
    - (iii) be damaged or disfigured by impact or scratching.
- 7.3 Where C.B.L. is required to install the Materials, the Client 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 C.B.L. shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto. In the event C.B.L. is required to redesign or modify their products to work with the unsound structure, this will be subject to a variation and shall be detailed and invoiced in accordance with clauses 5.3 and 5.4.
- 7.4 The Client shall ensure that C.B.L. has clear and free access to the site at all times to enable them to undertake the Works, and that such access is suitable to accept the weight of laden trucks and associated equipment as may be deemed necessary by C.B.L. C.B.L. shall not be liable for any loss or damage to the site (including, without limitation, damage to pipes, cables, shrubs, pathways, driveways and concreted or paved or grassed areas, or anything else on or near the site) during delivery, installation or any other time, unless due to the negligence of C.B.L.
- 7.5 The Client acknowledges that C.B.L. is only responsible for Materials that are installed or replaced by C.B.L. In the event that other items subsequently fail, the Client agrees to indemnify C.B.L. against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 7.6 The Client acknowledges and agrees:
  - (a) the standard gap between the bottom of the fence and the ground after installation can vary between fifteen 15mm and 95mm (depending on how level the fence line is), unless special arrangements to the contrary have been made and previously agreed upon by C.B.L. and the Client;
  - (b) to make provisions for working platforms at the required positions to carry out the Works;
  - (c) to obtain all Council, Engineers, Works insurance and any other local and statutory authority's approval fees where applicable and be responsible for the costs of the same, unless otherwise agreed in writing between both parties;
  - (d) C.B.L.'s liability subject to clause 16 is limited to C.B.L.'s quotation that covers the installation and thereby will not accept any liability for occurrences that relates to defects in supporting structures not installed by C.B.L.;
  - (e) industry standard maximum tolerance is 1mm curve per 200m length of glass, or part thereof. For example, a 1400mm panel of glass has a +/-7mm tolerance. Any glass that is out of tolerance will be replaced and installed free of charge;
  - (f) gap spacing for glass fences and balustrade by law can be no larger than 100mm. C.B.L. allows for gap spacing of approximately 30mm. For some configurations it may allow for more or less but the objective is at all times is to ensure that all gaps are of the same size however, C.B.L. does not guarantee this spacing precisely as some variation may occur between the glass panels;
  - (g) C.B.L. shall not be responsible for digging land out under fence lines nor removal of soil from the site.
- 7.7 The Client shall ensure that:
  - (i) it (or its legally authorised representative) are on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Client fails to comply with this clause then C.B.L. accepts no responsibility for installation decisions (including any resulting incorrect location of the fence and/or gates) that need to be made by C.B.L. in the Client's absence;
  - (ii) any existing fence (including existing footings), trees and tree branches, vines, shrubs garden beds, pots, watering systems, etc. are removed or cleared to allow C.B.L. clear access along the proposed fence line prior to commencement of the Works;
- (b) the Client shall provide C.B.L. with temporary lighting, toilet, eating and first aid facilities (if required), and a suitable free power source and adequate water supply to enable them to carry out the Works;
- (c) where C.B.L. install product on a retaining wall C.B.L. shall not be liable for any movement in the fence due to consolidation or the movement of soil or any other component of the retaining wall.
- 8. Accuracy of Client's Plans and Specifications**
- 8.1 C.B.L. 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, C.B.L. accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 If the giving of a quotation for the provision of Works involves C.B.L. estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of thereof before the Client accepts such quotation. Should the Client require any changes to C.B.L.'s estimated measurements and quantities, the Client shall request such changes in writing before acceptance of the quotation.
- 9. Client's Responsibilities**
- 9.1 It shall be the Client's responsibility to ensure that, prior to commencement of the Works by C.B.L.:
  - (a) and unless otherwise agreed between both parties, any furniture, furnishings or personal materials are removed from the vicinity of the Works and agrees that C.B.L. shall not be liable for any damage caused to those items through the Client's failure to comply with this clause;
  - (b) C.B.L. is advised of the precise location of all known underground services, and asbestos and/or hazardous materials (and that these are clearly marked) on site. The underground mains and 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. Whilst C.B.L. will take all care to avoid damage to any underground services the Client agrees to indemnify C.B.L. 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 by the Client.
- 9.2 The Client shall be responsible for:
  - (a) protecting all trees and shrubs. C.B.L. accepts no responsibility for damage to the same;
  - (b) supervising the erection to begin and be completed by C.B.L. in the correct position as C.B.L. will not be liable for the incorrect location of the Materials;
  - (c) maintaining the pool fence as a compliant barrier and ensuring that the gate hinges and latch continue to be self-closing and self-latching by pool fence regulations;
  - (d) having, at the Client's own cost, a licensed electrical contractor electrically earth the pool fence in accordance with Wiring Rules Standard AS/NZ 3000, if required. In general, pool fences and support structures situated closer than 1250mm to swimming pools may require connection of an equipotential bond (joining together metalwork that is or may be earthed so that it is at the same potential or voltage everywhere) which joins together all the conductive parts in and near the pool, the steel reinforcing in the shell and handrails which connects them to an earthing point.
- 9.3 Although C.B.L. complies with relevant New Zealand Standards for pool safety fencing, the final responsibility for swimming pool safety (including ensuring all fencing and/or barriers, and any boundary fencing that forms part of the pool fence, are pool fence compliant) in accordance with any Local Government regulations is the pool owners, and C.B.L. accepts no responsibility for any accident in any pool where a safety fence has been erected.
- 9.4 Where C.B.L. attaches a post or panel to the Client's wall, it is the Client's responsibility to repair any pest control barrier.
- 10. Compliance with Laws**
- 10.1 The Client and C.B.L. 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 regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation, particularly those in relation to asbestos and/or other hazardous materials (and the safe removal and disposal of the same). The Client agrees to indemnify C.B.L. against all claims arising from health issues related to exposure to asbestos at the site.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 11. Title**
- 11.1 The Client acknowledges and agrees that the Client's obligations to C.B.L. for the provision the Works shall not cease, and ownership of the Materials shall not pass, until:
  - (a) the Client has paid C.B.L. all amounts owing for the particular Works; and
  - (b) the Client has met all other obligations due by the Client to C.B.L. in respect of all contracts between C.B.L. and the Client.
- 11.2 Receipt by C.B.L. of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then C.B.L.'s ownership or rights in respect of the Works, and this agreement, shall continue.
- 11.3 It is further agreed that, until ownership of the Works passes to the Client in accordance with clause 11.1:
  - (a) the Client is only a bailee of the Materials, and unless those Materials have become fixtures, must return them to C.B.L. on request; and
  - (b) unless the Materials have become fixtures the Client irrevocably authorises C.B.L. to enter any premises where C.B.L. believes the Materials are kept and recover possession thereof.
- (c) C.B.L. may commence proceedings to recover the Price, notwithstanding that ownership of the Works has not passed to the Client.
- 12. Personal Property Securities Act 1999 ("PPSA")**
- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

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- (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 previously supplied by C.B.L to the Client (if any) and all Materials that will be supplied in the future by C.B.L to the Client.
- 12.2 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 C.B.L may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, C.B.L 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 a financing change statement or a change demand without the prior written consent of C.B.L; and
- (d) immediately advise C.B.L of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 12.3 C.B.L and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by C.B.L, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by C.B.L under clauses 12.1 to 12.5.
- 13. Security and Charge**
- 13.1 In consideration of C.B.L agreeing to provide 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).
- 13.2 The Client indemnifies C.B.L from and against all C.B.L's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising C.B.L's rights under this clause.
- 13.3 The Client irrevocably appoints C.B.L and each director of C.B.L as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Intellectual Property**
- 14.1 Where C.B.L has designed, drawn, written plans or a schedule of Works, or created any Materials for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and Materials shall remain vested in C.B.L, and shall only be used by the Client at C.B.L's discretion.
- 14.2 The Client warrants that all designs, specifications or instructions given to C.B.L will not cause C.B.L to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify C.B.L against any action taken by a third party against C.B.L in respect of any such infringement.
- 14.3 The Client agrees that C.B.L may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials which C.B.L has created for the Client.
- 15. Client's Disclaimer**
- 15.1 The Client hereby disclaims any right to rescind, or cancel any contract with C.B.L or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by C.B.L and the Client acknowledges that the Materials are bought relying solely upon the Client's skill and judgment.
- 16. Defects and Returns**
- 16.1 The Client shall inspect the Materials on Delivery and shall within five (5) days of such time (being of the essence) notify C.B.L of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford C.B.L an opportunity to inspect the Materials within a reasonable time following such notification 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 C.B.L has agreed in writing that the Client is entitled to reject, C.B.L's liability is limited to either (at C.B.L's discretion) replacing the Materials or repairing the Materials.
- 16.2 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
- (b) C.B.L 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 Delivery; and
- (d) C.B.L 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.
- 16.3 Pre-ordered items, or Materials ordered from overseas or made to the Client's specifications, are under no circumstances acceptable for credit or return.
- 17. Warranty**
- 17.1 Subject to the conditions of warranty set out in clause 17.1 C.B.L warrants that if any defect in any workmanship of C.B.L becomes apparent and is reported to C.B.L within three (3) months of the date of delivery (time being of the essence) then C.B.L will either (at C.B.L's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by clause 17.1 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 C.B.L; 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 C.B.L shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without C.B.L's consent.
- (c) in respect of all claims C.B.L 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.
- 17.3 For Materials not manufactured by C.B.L, the warranty shall be the current warranty provided by the manufacturer of the Materials. C.B.L 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.
- 18. Default and Consequences of Default**
- 18.1 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 C.B.L's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes C.B.L any money the Client shall indemnify C.B.L from and against all costs and disbursements incurred by C.B.L in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, C.B.L's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies C.B.L may have under this contract, if a Client has made payment to C.B.L, 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 C.B.L under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 18.4 Without prejudice to any other remedies C.B.L may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions C.B.L may suspend or terminate the provision of Works to the Client. C.B.L will not be liable to the Client for any loss or damage the Client suffers because C.B.L has exercised its rights under this clause.
- 18.5 Without prejudice to C.B.L's other remedies at law C.B.L shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to C.B.L shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to C.B.L becomes overdue, or in C.B.L's opinion the Client will be unable to make a payment when it falls due;
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Cancellation**
- 19.1 C.B.L may cancel any contract to which these terms and conditions apply or cancel provision of the Works at any time before the Works have commenced by giving written notice to the Client. On giving such notice C.B.L shall repay to the Client any sums paid in respect of the Price. C.B.L shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 Subject to this clause 19, the Client may only cancel the provision of the Works by giving seven (7) days written notice to C.B.L, and the Client shall be liable for all Works provided up to the date of cancellation and any and all loss incurred (whether direct or indirect) by C.B.L as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 C.B.L reserves the right to postpone all Works arranged in the event of poor weather conditions that may pose a safety risk for all parties. The Client accepts in this instance rescheduling for delivery of the Works shall not attract an additional administrative fee as per clause 6.4, however, where the Client wishes to postpone the start date, the Client acknowledges that not less than seven (7) days' written notice must be provided to C.B.L, failure to comply will result in an additional charge as per clause 6.4.
- 19.4 Should council permission of the Works be refused, this agreement shall be cancelled and the deposit shall be returned to the Client, less a reasonable amount for the performance of preparation of plans and any other work or attendances and negotiations with public utilities and authorities (and the fees charged by them) by C.B.L.
- 19.5 Cancellation of orders for Materials made to the Client's specifications will definitely not be accepted once production has commenced, or an order has been placed.
- 20. Construction Contracts Act 2002**
- 20.1 The Client hereby expressly acknowledges that:
- (a) C.B.L 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 C.B.L by a particular date; and
- (iv) C.B.L has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if C.B.L 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 C.B.L exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to C.B.L 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 C.B.L suspending work under this provision.
- 21. Dispute Resolution**
- 21.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so
- resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
- 21.2 Where there is any dispute between the parties, whether relating to overdue payment, suspension of the Works, or otherwise, then the Client agrees that they shall not contract any third party to replace C.B.L as their provider of the Materials and Works which were to be supplied under this agreement until the arbitration process in clause 21.1 has been completed, and then only if the arbitrator has found against C.B.L in its determination, and C.B.L is unable or unwilling to resolve, rectify or correct the issues that have led the arbitrator to find against C.B.L.
- 22. Liquidated Damages**
- 22.1 Liquidated Damages shall only apply in the event that negligence on C.B.L's part occurs and means that Practical Completion has not been achieved by the end of the working period as previously agreed to. In this instance only, the Client shall be entitled to liquidated damages equivalent to the amount as previously agreed to for each day after the working period that the Works remain uncompleted, continuing until either Practical Completion has been achieved or the Client has taken possession of the worksite whichever is the earliest.
- 22.2 Liquidated damages applied under this contract may only be deducted from the final progress payment, and in the event there is a shortfall then such shortfall shall become a debt due and payable by C.B.L to the Client.
- 23. Privacy Act 1993**
- 23.1 The Client authorises C.B.L or C.B.L'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 C.B.L from the Client directly or obtained by C.B.L 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 C.B.L for a copy of the information about the Client retained by C.B.L and the right to request C.B.L to correct any incorrect information about the Client held by C.B.L.
- 24. Unpaid Seller's Rights**
- 24.1 Where the Client has left any item with C.B.L for repair, modification, exchange or for C.B.L to perform any other service in relation to the item and C.B.L has not received or been tendered the whole of any monies owing to it by the Client, C.B.L shall have, until all monies owing to C.B.L are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Materials.
- 24.2 The lien of C.B.L shall continue despite the commencement of proceedings, or judgment for any monies owing to C.B.L having been obtained against the Client.
- 25. Service of Notices**
- 25.1 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.
- 25.2 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.
- 26. General**
- 26.1 The failure 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 Subject to clause 16 or 22, C.B.L 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 C.B.L of these terms and conditions (alternatively C.B.L's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 26.4 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 C.B.L nor to withhold payment of any invoice because part of that invoice is in dispute.
- 26.5 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 26.6 The Client agrees that C.B.L 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 C.B.L to provide Materials to the Client.
- 26.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.