

1. Definitions

- 1.1 “**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.
- 1.2 “**Chillwell**” means Chillwell Limited T/A Chillwell LTD, its successors and assigns or any person acting on behalf of and with the authority of Chillwell Limited.
- 1.3 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Chillwell Limited 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 partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “**Works**” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Chillwell Limited 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).
- 1.5 “**Worksite**” means the address nominated by the Client to which the Materials are to be supplied by Chillwell Limited.
- 1.6 “**Confidential Information**” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: 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) and pricing details.
- 1.7 “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between Chillwell Limited 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 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 Client acknowledges and accepts that:
- (a) the supply of Works shall not take effect until the Client has been approved by Chillwell Limited. In the event that the supply of Works requested exceeds the payment terms, Chillwell Limited reserves the right to refuse delivery; and
 - (b) 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, Chillwell Limited reserves the right to vary the Price with alternative Materials as per clause 6.2, subject to prior confirmation and agreement of both parties; and
 - (c) Chillwell Limited also reserves the right to halt all Works until such time as Chillwell Limited and the Client agree to such changes. Chillwell Limited shall not be liable to the Client for any loss or damage the Client suffers due to Chillwell Limited exercising its rights under this clause; and
 - (d) the cost of any fees or inspections by engineers or council shall be the responsibility of the Client.
- 2.5 If Chillwell Limited has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.6 Chillwell Limited has the right to postpone or refuse to provide Works where:
- (a) unsafe or unsanitary conditions exist; or
 - (b) Chillwell Limited deems the equipment under the Contract is no longer economically repairable. Chillwell Limited will provide the Client with a proposal to replace such equipment; or
 - (c) the access to the equipment is not accessible including but not limited to, having adequate crawl space, attic and roof space to provide dry access to service equipment and assets.
- 2.7 In the event that Chillwell Limited is required to provide the Works, planned services or maintenance urgently, that may require Chillwell Limited’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then Chillwell Limited reserves the right to charge the Client a minimum **call out fee** based on Chillwell Limited’s standard hourly labour rate, plus travel, plus Materials or, unless otherwise agreed between Chillwell Limited and the Client.
- 2.8 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.
- 2.9 These terms and conditions may be meant to be read in conjunction with Chillwell Limited’s Maintenance Agreement and Hire Form, and where the context so permits, the terms ‘Works’ or ‘Material’ shall include any supply of equipment, as defined therein.

3. Authorised Representatives

- 3.1 The Client acknowledges that Chillwell Limited shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Chillwell Limited, 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 Chillwell Limited for all additional costs incurred by Chillwell Limited (including Chillwell Limited’s profit margin) in providing any Works or variation/s requested thereto by the Client’s duly authorised representative.

4. Errors and Omissions

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- 4.1 The Client acknowledges and accepts that Chillwell Limited 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 Chillwell Limited 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 Chillwell Limited 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 Chillwell Limited; 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 Chillwell Limited 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 Chillwell Limited as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At Chillwell Limited's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Chillwell Limited to the Client in respect of Works performed or Materials supplied; or
 - (b) Chillwell Limited's quoted Price (subject to clause 6.2) which shall be binding upon Chillwell Limited provided that the Client shall accept Chillwell Limited's quotation in writing within thirty (30) days.
- 6.2 Chillwell Limited 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) if during the course of the Works the Materials are not or cease to be available from Chillwell Limited's third party suppliers, then Chillwell Limited reserves the right to provide alternate Materials (or components of the Materials); or
 - (d) 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 or insufficient crawl space, obscured building defects and damages which requires remedial work, safety considerations and/or health hazards (such as the discovery of asbestos or other hazardous materials), fluctuations in refrigerants, existing wiring not up to current code standards, prerequisite work by any third party not being completed, underground locations (as per clause 13), or further faults found on disassembly and/or further inspection etc.) which are only discovered on commencement of the Works; or
 - (e) as a result of an increase in Chillwell Limited's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works, increases to Chillwell Limited in the cost of labour or Materials or due to relevant industry awards (e.g. site allowance and severance pay), which are outside the control of Chillwell Limited.
- 6.3 Variations will be charged for on the basis of Chillwell Limited's quotation, and will be detailed in writing, and shown as variations on Chillwell Limited's invoice. The Client shall be required to respond to any variation submitted by Chillwell Limited within ten (10) working days. Failure to do so will entitle Chillwell Limited 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 At Chillwell Limited's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Chillwell Limited, which may be:
- (a) on completion of the Works; or
 - (b) on or before delivery of the Materials; or
 - (c) by way of progress payments in accordance with Chillwell Limited's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed;
 - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Chillwell Limited.

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- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015.
- 6.7 Payment may be made by cash, cheque, 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 Chillwell Limited.
- 6.8 Chillwell Limited may in its discretion allocate any payment received from the Client towards any invoice that Chillwell Limited determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Chillwell Limited may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Chillwell Limited, payment will be deemed to be allocated in such manner as preserves the maximum value of Chillwell Limited's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Chillwell Limited nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Chillwell Limited is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Chillwell Limited an amount equal to any GST Chillwell Limited must pay for any supply by Chillwell Limited 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.

Credit Card Information

Chillwell Limited will:

- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by Chillwell Limited;
- (b) not disclose the Client's credit card details to any third party;

- (a) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 21) or where required by law.
- 7.2 The Client expressly agrees that, if pursuant to this Contract, there are:
 - (a) any unpaid Charges;
 - (b) other amounts due and outstanding by the Client;
 - (c) any equipment (or any part of them) supplied on loan that are lost or damaged.
- 7.3 Chillwell Limited is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

8. Contract Term

- 8.1 The commencement date shall be the date of the first delivery of the Works, or from the date of signing, whichever is the earlier. The Maintenance Contract shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least thirty (30) days required notice as defined in the Maintenance Contract prior to the expiration date of the initial term or any additional term.
- 8.2 The Client acknowledges and accepts that the Price stated will remain fixed for an initial period of twelve (12) months from the date of the Maintenance Contract and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).

9. Provision of the Works

- 9.1 Subject to clause 9.2 it is Chillwell Limited's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 9.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Chillwell Limited claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Chillwell Limited's control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify Chillwell Limited that the Worksite is ready.
- 9.3 At Chillwell Limited's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 9.4 Chillwell Limited 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.
- 9.5 Any time specified by Chillwell Limited for delivery of the Works is an estimate only and Chillwell Limited 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 Chillwell Limited is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Chillwell Limited 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.

10. Risk

- 10.1 If Chillwell Limited retains ownership of the Materials under clause 14.2 then:
 - (a) where Chillwell Limited is supplying Materials only, 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 Chillwell Limited's address; or
 - (ii) the Materials are delivered by Chillwell Limited or Chillwell Limited's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Chillwell Limited is to both supply and install Materials then Chillwell Limited 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 Client.
- 10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests Chillwell Limited to leave Materials outside Chillwell Limited'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.
- 10.3 The Client acknowledges and agrees that where Chillwell Limited has performed temporary repairs on the equipment that:
 - (a) Chillwell Limited offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) Chillwell Limited will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the damaged equipment.

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- 10.4 Any advice, recommendation, information, assistance or service provided by Chillwell Limited in relation to the Works and/or Materials supplied is given in good faith, is based on Chillwell Limited's own knowledge and experience and shall be accepted without liability on the part of Chillwell Limited, 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.
- 10.5 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 the discovery of asbestos, defective or unsafe wiring, or dangerous access to crawl spaces and/or roofing), Chillwell Limited reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then Chillwell Limited shall be entitled to delay installation of the Materials (in accordance with clause 9.2) until Chillwell Limited is satisfied that it is safe for the installation to proceed.
- 10.6 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 Chillwell Limited against any costs incurred by Chillwell Limited as a consequence of such discovery. Under no circumstances will Chillwell Limited handle removal of asbestos product.
- 10.7 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.
- 10.8 Where the Client has supplied materials for Chillwell Limited to complete the Works, the Client acknowledges that they accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Chillwell Limited shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 10.9 The Client acknowledges that:
- (a) Chillwell Limited is only responsible for parts that are replaced by Chillwell Limited, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify Chillwell Limited against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising;
 - (b) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in Chillwell Limited's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and
 - (c) they shall
 - (i) 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;
 - (ii) 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 Chillwell Limited to carry out the Works; and
 - (iii) provide and have erected scaffolding to enable the Works to be undertaken (where in Chillwell Limited'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; and
 - (iv) remove any furniture or personal/valuable items from the vicinity of the Works, and agrees that Chillwell Limited shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and
 - (v) provide Chillwell Limited while at the worksite with adequate access to electricity, temporary lighting, toilet, eating and first aid facilities if so required;
 - (vi) be wholly responsible for:
 - (A) the removal of rubbish from or clean-up of the worksite; and
 - (B) any animals and/or children present on the worksite.

- 10.10 Chillwell Limited:
- (a) 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 Chillwell Limited's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to Chillwell Limited. Accordingly, Chillwell Limited offers no warranty in regards to the aforementioned;
 - (b) 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, Chillwell Limited accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information; and
 - (c) accepts no responsibility for:
 - (i) any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with Chillwell Limited's and/or the manufacturers' recommendations;
 - (ii) any damage or defects in any Materials caused by movement and/or interference of the said Materials;
 - (iii) 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.
- 10.11 The Client warrants that no other tradesmen interfere with any Works and/or Materials supplied under this Contract. Chillwell Limited shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.

11. Access

- 11.1 The Client shall ensure that Chillwell Limited has clear and free access to the Worksite at all times to enable them to undertake the Works. Chillwell Limited shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Chillwell Limited.
- 11.2 The Client agrees to be present at the Worksite when and as reasonably requested by Chillwell Limited and its employees, contractors and/or agents.
- (a) *Worksite Inductions* in the event the Client requires an employee or sub-contractor of Chillwell Limited to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay Chillwell Limited's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where Chillwell Limited is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out Chillwell Limited's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by Chillwell Limited.

12. Air Conditioning Risk

- 12.1 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 12.2 The final location of the wall, window or floor unit will be as described in the quotation.
- 12.3 Chillwell Limited shall upon installation ensure that all installed equipment meet current industry standards applicable to noise levels, however Chillwell Limited cannot guarantee that noise levels will remain constant post installation as the equipment may be impacted by many factors such as the weather, lack of maintenance, tampering etc. In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 12.4 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 12.5 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Chillwell Limited immediately upon any proposed changes. The Client agrees to indemnify Chillwell Limited against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.

13. Underground Locations

- 13.1 Prior to Chillwell Limited commencing any work the Client must advise Chillwell Limited of the precise location of all underground services on the Worksite and clearly mark the same. 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 the Worksite.
- 13.2 Whilst Chillwell Limited will take all care to avoid damage to any underground services the Client agrees to indemnify Chillwell Limited 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 13.1.

14. Compliance with Laws

- 14.1 The Client and Chillwell Limited 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 or any other relevant safety standards or legislation pertaining to the Works.
- 14.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Materials.
- 14.3 Notwithstanding clause 14.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Chillwell Limited agrees at all times comply with sections 28 and 34 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 Client who has engaged a thirty party head contractor.
- 14.4 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 Chillwell Limited, then Chillwell Limited 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 the responsibility of the Client and will be shown as a variation on the invoice.
- 14.5 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". Chillwell Limited's live services procedures are designed to eliminate risk of injury to Chillwell Limited'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.

15. Title

- 15.1 Chillwell Limited and the Client agree that where it is intended that the ownership of Materials is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid Chillwell Limited all amounts owing for the Works; and
 - (b) the Client has met all other obligations due by the Client to Chillwell Limited in respect of all contracts between Chillwell Limited and the Client.
- 15.2 Receipt by Chillwell Limited 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.
- 15.3 It is further agreed that:
- (a) the Client holds the benefit of the Client's insurance of the Materials on trust for Chillwell Limited and must pay to Chillwell Limited the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (b) the production of these terms and conditions by Chillwell Limited shall be sufficient evidence of Chillwell Limited's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Chillwell Limited to make further enquiries;
 - (c) 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 Chillwell Limited and must pay or deliver the proceeds to Chillwell Limited on demand;
 - (d) 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 Chillwell Limited and must sell, dispose of or return the resulting product to Chillwell Limited as it so directs;
 - (e) Chillwell Limited may recover possession of any Materials in transit whether or not delivery has occurred;
 - (f) 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 Chillwell Limited; and
 - (g) Chillwell Limited may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

16. Personal Property Securities Act 1999 (“PPSA”)

- 16.1 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 Chillwell Limited for Works – that have previously been supplied and that will be supplied in the future by Chillwell Limited to the Client.
- 16.2 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 Chillwell Limited may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Chillwell Limited 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 Chillwell Limited; and
 - (d) immediately advise Chillwell Limited 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.
- 16.3 Chillwell Limited and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by Chillwell Limited, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Client shall unconditionally ratify any actions taken by Chillwell Limited under clauses 16.1 to 16.5.
- 16.7 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of Chillwell Limited 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).
- 17.2 The Client indemnifies Chillwell Limited from and against all Chillwell Limited’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Chillwell Limited’s rights under this clause.
- 17.3 The Client irrevocably appoints Chillwell Limited and each director of Chillwell Limited as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client’s behalf.

18. Defects

- 18.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify Chillwell Limited of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Chillwell Limited an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage.
- 18.2 For defective Services, which Chillwell Limited has agreed in writing that the Client is entitled to reject, Chillwell Limited’s liability is limited to either (at Chillwell Limited’s discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 18.1.

19. Warranties

- 19.1 Subject to the conditions of warranty set out in clause 19.2 Chillwell Limited warrants that if any defect in any workmanship of Chillwell Limited becomes apparent and is reported to Chillwell Limited within twelve (12) months of the date of delivery of services (time being of the essence) then Chillwell Limited will either (at Chillwell Limited's sole discretion) replace or remedy the workmanship.
- 19.2 The conditions applicable to the warranty given by clause 19.1 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 as per manufacturer's terms and conditions or other information supplied; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Chillwell Limited; 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 Chillwell Limited shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Chillwell Limited's consent.
 - (c) in respect of all claims Chillwell Limited 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.
- 19.3 For all warranties on Materials supplied by Chillwell Limited are as per manufacturer's terms and conditions and the warranty shall be the current warranty provided by the manufacturer of the Materials. Chillwell Limited 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.

20. Consumer Guarantees Act 1993

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

21. Intellectual Property

- 21.1 Where Chillwell Limited 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 Chillwell Limited, and shall only be used by the Client at Chillwell Limited's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Chillwell Limited.
- 21.2 The Client warrants that all designs, specifications or instructions given to Chillwell Limited will not cause Chillwell Limited to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Chillwell Limited against any action taken by a third party against Chillwell Limited in respect of any such infringement.
- 21.3 The Client agrees that Chillwell Limited may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Chillwell Limited has created for the Client.

22. Default and Consequences of Default

- 22.1 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 Chillwell Limited's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes Chillwell Limited any money the Client shall indemnify Chillwell Limited from and against all costs and disbursements incurred by Chillwell Limited in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Chillwell Limited's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies Chillwell Limited may have under this Contract, if a Client has made payment to Chillwell Limited, 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 Chillwell Limited under this clause 22, 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.
- 22.4 Without prejudice to Chillwell Limited's other remedies at law Chillwell Limited shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Chillwell Limited shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Chillwell Limited becomes overdue, or in Chillwell Limited'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 Chillwell Limited;
 - (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.

23. Cancellation

- 23.1 Without prejudice to any other rights or remedies Chillwell Limited may have, if at any time the Client 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 Client of such notice/s) then Chillwell Limited may suspend or terminate the supply of the Works. Chillwell Limited will not be liable to the Client for any loss or damage the Client suffers because Chillwell Limited has exercised its rights under this clause.
- 23.2 Chillwell Limited 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 Chillwell Limited shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Chillwell Limited for Works already performed. Chillwell Limited shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Client:
- (a) cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Chillwell Limited as a direct result of the cancellation (including, but not limited to, any loss of profits); cancels the provision of Works prior to the expiry of any specified contract term, then the Client shall be liable to pay for the provision of the Works until the expiration of the contract term;
 - (b) fails to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the Maintenance Contract, the Maintenance Contract shall automatically renew on a monthly basis, unless cancelled by way of the Client providing Chillwell Limited with thirty (30) days' notice.
 - (c) 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.

24. Privacy Policy

- 24.1 All emails, documents, images or other recorded information held or used by Chillwell Limited is Personal Information as defined and referred to in clause 24.2 and therefore considered confidential. Chillwell Limited acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 and 2020 (“the Act”) including Part II of the OECD Guidelines and as set out in the Act and any statutory requirements where relevant in a European Economic Area “EEA” under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). Chillwell Limited acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by Chillwell Limited that may result in serious harm to the Client, Chillwell Limited will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to Chillwell Limited in respect of cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Chillwell Limited when Chillwell Limited sends an email to the Client, so Chillwell Limited may collect and review that information (“collectively Personal Information”)
- Chillwell Limited agrees to display reference to such cookies and/or similar tracking technologies. In order to enable / disable the collection of Personal Information by way of cookies, the Client shall have the right to enable / disable the cookies first by selecting the option to enable / disable via the Client’s web browser, including removing cookies by deleting them from the browser history when exiting the website.
- 24.3 The Client authorises Chillwell Limited or Chillwell Limited’s agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other 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 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 Chillwell Limited from the Client directly or obtained by Chillwell Limited 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.
- 24.4 Where the Client is an individual the authorities under clause 24.2 are authorities or consents for the purposes of the Privacy Act 1993 and 2020.
- 24.5 The Client shall have the right to request (by e-mail) from Chillwell Limited, a copy of the Personal Information about the Client retained by Chillwell Limited and the right to request that Chillwell Limited correct any incorrect Personal Information.
- 24.6 Chillwell Limited will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required 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.
- 24.7 The Client can make a privacy complaint by contacting Chillwell Limited via e-mail. Chillwell Limited 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

25. Suspension of Works

- 25.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) Chillwell Limited has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Chillwell Limited by a particular date; and
 - (iv) Chillwell Limited has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Chillwell Limited 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 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 Chillwell Limited exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Chillwell Limited under the Contract and Commercial Law Act 2017; 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 Chillwell Limited suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes Chillwell Limited from continuing the Works or performing or complying with Chillwell Limited's obligations under this Contract, then without prejudice to Chillwell Limited's other rights and remedies, Chillwell Limited may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by Chillwell Limited as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 25.2 If pursuant to any right conferred by this Contract, Chillwell Limited suspends the Works and the default that led to that suspension continues unremedied subject to clause 23.1 for at least ten (10) working days, Chillwell Limited shall be entitled to terminate the Contract, in accordance with clause 23.

26. Service of Notices

- 26.1 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 email to the other party's last known email address.
- 26.2 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.

27. Trusts

- 27.1 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 Chillwell Limited may have notice of the Trust, the Client covenants with Chillwell Limited 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 Chillwell Limited (Chillwell Limited 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.

28. General

- 28.1 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).
- 28.2 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.
- 28.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Christchurch, New Zealand.
- 28.4 Except to the extent permitted by law "CGA", Chillwell Limited 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 Chillwell Limited of these terms and conditions (alternatively Chillwell Limited's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 28.5 Chillwell Limited may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 28.6 The Client cannot licence or assign without the written approval of Chillwell Limited.
- 28.7 Chillwell Limited 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 Chillwell Limited's sub- contractors without the authority of Chillwell Limited.
- 28.8 The Client agrees that Chillwell Limited may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Chillwell Limited to provide Works to the Client.
- 28.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party.
- 28.10 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.