

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Seller,' 'we' or 'us' means Expert Turf Services Limited trading as Expert Turf (our successors and assigns), or any person acting with the authority of Expert Turf Services Limited.
- 1.3. 'Client,' 'you' or 'your' means the Client purchasing Goods or Services from us, or any person acting on your behalf (including authorised representatives).
- 1.4. 'Services' means all Services provided to you, including any provision of Goods as specified in any documentation or otherwise provided to you by us under this Agreement.
- 1.5. 'Goods' means all Goods required to complete the Services (including the provision of turf and synthetic turf).
- 1.6. 'Price' means the Price of the Services (in accordance with clause 7).
- 1.7. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy and any orders, purchases or schedules as applicable).
- 1.8. 'Amounts Owing' means any amount owed by you to us, from time to time, including the Price, any interest payable by you, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 1.9. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.10. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, this Agreement, the Goods or Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information which would itself be Confidential Information.
- 1.11. 'Event of Default' means your failure to comply with this Agreement (including your obligations set out in clause 7).
- 1.12. 'Insolvency Event' means an event of insolvency, including bankruptcy; the appointment of an insolvency administrator, manager, receiver or liquidator; any action related to winding up or making a material arrangement in relation to creditors; applying for any type of protection against creditors; being unable to pay your debts as they fall due; or taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.13. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.14. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.15. 'PPSA' means the Personal Property Securities Act 1999.
- 1.16. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.17. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.18. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. All orders are subject to our acceptance and we may (at our sole discretion) accept any order in whole or in part, by issuing an invoice in respect of the applicable Services, delivering the Goods or Services or otherwise confirming the order in writing.
- 3.2. We are under no obligation to enquire as to the authority of any person placing an order on your behalf.

- 3.3. If you place an order for or accept any provision of Services from us, then you are taken to accept this Agreement and are immediately bound jointly and severally (including if you are part of a trust in which case you shall be bound in your capacity as a trustee).
- 3.4. Your acceptance to this Agreement shall continue to all future orders, purchases or schedules (as applicable) and this Agreement will be, or is deemed to be incorporated into, and form part of, each order, purchase or schedule as if this Agreement was set out or implied therein in full.
- 3.5. Electronic signatures shall be deemed to be accepted by both parties (provided that both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA).
- 3.6. This Agreement may only be amended with our written consent and shall supersede any other document or other agreement between both parties.

4. AUTHORISED REPRESENTATIVES

- 4.1. Should you introduce any third party to us as your authorised representative, that representative shall have the full authority of you to order any Services on your behalf and such authority shall continue until all requested Services have been completed or you notify us in writing that said person is no longer your authorised representative.
- 4.2. You agree that you will be solely liable for any expenses incurred in providing any Services requested by your authorised representative.
- 4.3. If your authorised representative is to have only limited authority to act on your behalf, then you must advise in writing to us, the parameters of the limited authority granted to your authorised representative.

5. CHANGES TO DETAILS

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name and/or any other changes to your details (including but not limited to, changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. Should you fail to comply with clause 5.1, you agree that you will be in breach of this Agreement and shall be liable for any expense or loss of profit suffered by us (including any Related Company).

6. PURCHASE ORDERS

- 6.1. Where you do not elect to control your purchases by purchase order or a letter of authority, then all purchases made by you (including any authorised representative) shall remain at all times payable by you.
- 6.2. You agree to notify us in writing immediately upon the departure of any of your Personnel if they are an authorised account user. Should you fail to advise us in writing of any authorised account user's departure, then you agree to be bound by all purchase orders made by that account user until we receive such written notice.

7. PRICE AND PAYMENT

- 7.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 7.2. Unless otherwise agreed by us in writing the Price shall be:
 - (a) indicated on invoices provided to you in respect of the Services; or
 - (b) our quoted Price which will be binding, subject to your acceptance of our quotation in writing within thirty (30) days.
- 7.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Goods or Services will be at our standard rate according to our current Price list or at a rate that is notified to you by us.
- 7.4. The Price will be payable by you on the date(s) determined by us (at our sole discretion), which may be:
 - (a) on completion of the Services;
 - (b) by way of progress payments in accordance with our agreed progress payment schedule and such progress payment claims may include the value of any authorised variations and the value of any Goods that have been delivered to the worksite (whether installed or not);
 - (c) due twenty (20) days following the end of the month in which a statement or invoice is sent to your address or address for notices; or
 - (d) seven (7) days following the date of any invoice given to you by us if there is no notice to the contrary.
- 7.5. Where we pay any subcontractor's account on your behalf, you agree to reimburse us for the payment of the subcontractor's account within seven (7) days (unless otherwise agreed in writing).
- 7.6. We reserve the right at any time to alter any Price lists. Any alterations to any Price list will be effective from the date specified by us and will apply to all orders or purchases accepted by us on or after that date.
- 7.7. Payment may be made by cash, electronic/online banking, or any other method that we agree to in writing.

- 7.8. Payment in any form other than cash shall not be taken to be payment for the Amounts Owing and all ownership rights of the Goods or Services remain with us until that form of payment has been cleared and received in accordance with clause 19.1.
- 7.9. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing.
- 7.10. You shall not withhold payment of any Amounts Owing because part of the Services are disputed and in the event that part of the Services is disputed, you agree that you will:
- perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
 - provide a specific and detailed explanation of the dispute in writing to us within seven (7) days from the date of delivery.
- 7.11. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

8. VARIATIONS

- 8.1. The Price will be adjusted to reflect any extra cost or expense incurred by us because of any instruction received from you (or your authorised representative), or any action or inaction on your part.
- 8.2. We reserve the right to change the quoted Price in the event that:
- any information supplied by you is inaccurate;
 - you request any change to plans, specifications or the Services that were originally quoted; or
 - our costs increase due to changes beyond our control (including any charges, taxes, or levies imposed by any Regulator).
- 8.3. You agree that where earthmoving or excavation work has been provided by a third party (that has been engaged by you) and such work is found to be defective or not up to standard, then we reserve the right to charge a variation to remedy such work.
- 8.4. Where you request us to estimate the quantity of the Goods to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the estimate and the actual quantities supplied and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.

9. DELIVERY

- 9.1. We will deliver the Goods or Services to the delivery location that we each agree to in writing and if the delivery location is at your premises (subject to clause 28), you will provide us and our Personnel with suitable access to the premises, together with any amenities reasonably required by us or our Personnel to perform delivery of the Goods or Services.
- 9.2. Delivery of the Goods is taken to occur at the time that:
- you (or your nominated) carrier takes possession of the Goods at our address; or
 - we (or our nominated carrier) delivers the Goods to your nominated address even if you are not present at the address.
- 9.3. At our sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 9.4. You must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that you are unable to take delivery of the Goods as arranged, then we shall be entitled to charge a reasonable fee for redelivery (including any storage of the Goods).
- 9.5. Delivery times are expected to be 2-4 business days after ordering, with 3-7 business days for rural deliveries. Any delivery time specified by us is an estimate only, and we will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery, nor can you cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery, or any delay in delivery due to any event beyond our control.
- 9.6. We may deliver the Goods in separate instalments which will be invoiced and paid as individual transactions under this Agreement.
- 9.7. It is our responsibility to ensure that the Services start as soon as it is reasonably possible, however, the Services commencement date will be postponed and the completion date will be extended by whatever time is reasonable if the provision of the Services is delayed by any event beyond our control (including poor weather conditions affecting the commencement date or the failure by you to obtain consents, have the worksite ready or make a selection of Goods that are required to complete the Services).
- 9.8. If we are unable to supply the Services as agreed solely due to any action or inaction of you, then we shall be entitled to charge a reasonable fee for the re-supplying of Services at a later time and date (including storage of the Goods if applicable).

10. ERRORS AND OMISSIONS

- 10.1. You agree that we have no liability in respect of any errors or omissions:

- resulting from an inadvertent mistake made by us in the formation or administration of this Agreement; or
 - contained in any documentation supplied to you by us in respect of the Services.
- 10.2. If such an error or omission occurs and it is not attributable to our negligence or willful misconduct then all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

11. DEFECTS

- 11.1. You shall inspect all Goods or Services immediately on delivery and shall notify us of any alleged defect, shortage in quantity, damage or any other issue within twenty-four (24) hours from the date of delivery.
- 11.2. If you do not notify us within the twenty-four (24) hour time frame (in accordance with clause 11.1) then the Goods or Services shall be presumed to be free from any defect and we will consider all Goods or Services to be supplied free from any defect or other issue, subject to clause 16.1.
- 11.3. You shall allow us to inspect the Goods or Services within seven (7) days (from the date of delivery) if you believe the Goods or Services are defective in any way.

12. RETURNS AND WARRANTIES

- 12.1. We will not accept the return of Goods for credit.
- 12.2. To the extent permitted by law, no warranty is given by us as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. We shall not be responsible for any loss or damage to the Goods or caused by the Goods (whether directly or indirectly).
- 12.3. For Goods not manufactured by us, the warranty shall be the current warranty provided by the manufacturer of the Goods and we shall not be bound by any condition, representation or warranty other than that which is given by the manufacturer of the Goods.

13. PRIVACY ACT 2020

- 13.1. You authorise us and our agents to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:
- exercising our rights or performing our obligations under this Agreement;
 - using the services of credit reporting and debt collection agencies and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
 - registering any Security Interest under this Agreement;
 - direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
 - the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 13.2. Clause 13.1 is authority and consent from you in accordance with sections in Part 3 and all other relevant sections in the Privacy Act 2020.
- 13.3. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access, and request correction of, any of your personal information held by us and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 13.4. If the Services are expected to involve the sharing of any data sets, or other personal information, to you by us, or us to you, we will enter into a separate data protection agreement with you.
- 13.5. If you do not provide the personal information requested by us, we may not be able to perform our obligations under this Agreement.

14. CONFIDENTIAL INFORMATION

- 14.1. Each party must keep confidential all Confidential Information, however, nothing in clause 14 prevents a party from disclosing Confidential Information:
- in circumstances expressly provided for in this Agreement;
 - if the disclosure is required by law or Regulator (but only to the extent required); or
 - if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.

14.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.

15. INTELLECTUAL PROPERTY

15.1. Copyright in all Goods or Services (including any plans, specifications or other technical information) provided by us under this Agreement is vested in us, including any new intellectual property which is created as a result of, or in connection with the provision of our Goods or Services.

15.2. If, notwithstanding clause 15.1 any intellectual property rights in any of our Goods or Services vests in you, you assign those intellectual property rights to us with effect from creation, and agree to do all things reasonably required by us to give effect to such assignment.

15.3. You warrant that the use by us of any plans, specifications or other technical information provided by you will not infringe the intellectual property rights of any other person and indemnify us against any expenses, or losses (including full legal expenses on a solicitor-client-basis) that we may suffer or incur in the event of any such infringement.

16. CONSUMER GUARANTEES ACT 1993 AND FAIR TRADING ACT 1986

16.1. Subject to clause 16.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the Consumer Guarantees Act 1993 (CGA)) under the CGA.

16.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:

(a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and

(b) it is fair and reasonable for the parties to be bound by clause 16.2.

16.3. If you are acquiring the Goods or Services for the purpose of resupplying the Goods or Services in trade, you undertake that you will:

(a) contract out of the CGA to the maximum extent permitted by law in your contracts with your customers; and

(b) procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.

16.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:

(a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and

(b) it is fair and reasonable for the parties to be bound by clause 16.4.

16.5. You will indemnify us against any expenses or losses incurred by us as a result of your breach of clause 16.

17. CANCELLATION

17.1. Should you cancel all or part of any order, you shall be liable for all Amounts Owing to us prior to cancellation (including any direct or indirect expenses incurred by us as a result of you cancelling any part of any order).

17.2. We shall be entitled to cancel all or part of any order of yours which remains unperformed and all Amounts Owing to us shall (whether or not due) become immediately payable if:

(a) any Amounts Owing to us becomes overdue, or in our opinion, you will be unable to meet your payments as they fall due; or

(b) an Insolvency Event occurs and you become insolvent/bankrupt, convene a meeting with your creditors or a receiver/liquidator or similar person is appointed in respect of you or any of your assets.

18. EVENT OF DEFAULT

18.1. If an Event of Default occurs, you agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including but not limited to, administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis).

18.2. Unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount from the due date of payment until the date the outstanding amount is paid (and any interest shall compound monthly at such a rate).

19. RETENTION OF TITLE

19.1. Ownership (including all right, title and interest) of the Goods or Services remains with us and does not pass to you until:

(a) all Amounts Owing have been received by us; and

(b) you have performed all of your obligations under this Agreement.

19.2. If any Amounts Owing is overdue or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Goods may be stored, to remove any Goods. We shall not be liable in contract, tort or otherwise, for any damages, expenses, or losses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal expenses on a solicitor-client basis), as a result of us exercising our rights under clause 19.2, except where damages, expenses or losses are due to our negligence or fraud.

19.3. If you resell or use any Goods before ownership of the Goods has passed to you (including combing or processing the Goods), the proceeds of such sale or use will be received and held by you (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).

19.4. If any Goods are damaged where full payment has not been received and therefore ownership remains with us, you agree that we are entitled to:

(a) receive all insurance proceeds paid for the Goods; and

(b) supply this Agreement as a binding legal agreement which is sufficient evidence for us to deal directly with the insurance company to receive all proceeds for the Goods which we legally own under clause 19.1.

19.5. We may commence proceedings to recover the Price of the Services provided notwithstanding that ownership of the Goods or Services has not passed to you.

20. SECURITY AND LIEN

20.1. Subject to us providing any Goods or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien, owned by you either now or in the future, to secure the performance of all obligations (including full payment of all Amounts Owing) under this Agreement.

20.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 20.1 of this Agreement (including signing any document on your behalf).

20.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 20 to secure the performance of your obligations under this Agreement.

20.4. In accordance with Part 5, subpart 5 of the CCLA, we hold a lien for work done and may sell at public auction any property that has been left by you for Services if any Amounts Owing are outstanding.

20.5. It is fair and reasonable for the parties to be bound by clause 20.

21. PERSONAL PROPERTY SECURITIES ACT 1999

21.1. You acknowledge and agree that:

(a) this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Goods or the proceeds of such Goods; and

(b) the Security Interest granted by you to us secures the payment of all Amounts Owing (all present and after-acquired personal property) you may owe to us from time to time and at any time.

21.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Goods or Services, or a Security Interest in the proceeds of any Goods or Services (a Security Interest taken in all collateral and any proceeds of any collateral).

21.3. To the extent permitted by law, we each contract out of:

(a) sections 114(1)(a), 133 and 134 of the PPSA; and

(b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.

21.4. You waive your right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.

21.5. Nothing in this Agreement is to be construed as an agreement that a Security Interest in Goods (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.

21.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.

- 21.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 21.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interest(s) as security for the Amounts Owing and we may suspend or cancel further supply of Goods or Services until you have provided such Security Interest(s).
- 21.9. Any actions taken by us under clause 21 shall be unconditionally ratified by you.

22. WORKSITE ACCESS

- 22.1. You shall ensure that we have clear and free access to the worksite at all times to enable us to undertake the Services (including the delivery or installation of the Goods) and we shall not be liable for any loss or damage to the worksite (including damage to pathways, driveways, footpaths or grassed areas) unless due to our negligence.
- 22.2. It is your responsibility to organise temporary fencing to ensure the worksite is protected from damage or theft if any fencing or other boundary is removed from the worksite.

23. CLIENT'S RESPONSIBILITIES

- 23.1. You agree to remove any furniture, furnishings or other property from the vicinity where the Services will be completed and accept that we shall not be liable for any damage caused by your failure to remove any property unless due to our negligence.
- 23.2. You warrant that you have sufficient funds available to honour your obligations of payment and will, on request, provide us with evidence verifying such funds by way of a letter of credit from your banking institution.

24. INSURANCE AND RISK

- 24.1. In the event we retain ownership of the Goods or Services in accordance with clause 19.1, then:
- where we supply Goods only, all risk for the Goods shall immediately pass to you on the delivery of the Goods (by us or our nominated carrier) and you must insure the Goods on or before delivery; or
 - where we are to supply and install Goods then we shall maintain an insurance policy for the Services until completion, at which point all risk shall immediately pass to you.
- 24.2. You accept that turf and any other flora, foliage or vegetation supplied by us are organic in nature and require care and maintenance. We will not accept any liability for flora, foliage or vegetation that is affected or dies due to your failure to properly maintain the flora, foliage or vegetation or follow any instructions or guidelines provided by us regarding the proper care of the turf or plants (including adequate watering).
- 24.3. You accept and have been made aware that turf is a natural product. We cannot guarantee that the appearance and/or colours of Goods (including turf or other vegetation) shown on our website exactly reproduce the appearance and/or colours of the physical Goods themselves and natural products may show some colour variations (including between digital images and the actual Goods).
- 24.4. We do not warrant that all batches of synthetic turf supplied are from the same dye lot and you acknowledge that colour variations are possible between batches. Any colour variation between batches of synthetic turf will not be considered a defect in the Services.
- 24.5. Where you have supplied Goods for us to complete the Services, you accept responsibility for the suitability of purpose, quality and any faults inherent in those Goods.
- 24.6. We may at our discretion notify you that we require you to store Goods or tools required for the completion of the Services at the worksite, in which case you agree to provide us with a safe area for storage and shall take all reasonable efforts to protect any Goods or tools from theft or damage (and the cost of repair or replacement of any Goods or tools that are stolen or damaged while stored at the worksite shall be your responsibility).
- 24.7. You accept that we are only responsible for Goods or Services that are provided or replaced by us and we do not accept any responsibility for previous Services carried out by any third party, or for any loss or damage to the Goods or Services that are caused by any other third party after the completion of the Services.
- 24.8. You agree that variations of colour, grain or shade are inherent in natural Goods and while every effort will be taken by us to match colour, grain or shade when selecting Goods, we shall not be liable for any variation in colour, grain or shade between batches of Goods or between new Goods and existing goods (and if there is a variation between batches, the Goods and Services will not be considered to contain any defect or faulty workmanship).
- 24.9. You agree that Goods supplied by us may:

- fade or change colour over time;
 - be damaged or scratched by impact;
 - expand or distort as a result of exposure to heat or weather conditions; or
 - mark or stain if exposed to certain substances (including those stated in any manufacturer's documentation).
- 24.10. Should you request us to leave Goods outside our premises for collection, or to deliver the Goods to an unattended location, you agree that those Goods shall be left unattended at your sole risk.

25. NOTIFICATION OF SERVICES

- 25.1. You must precisely locate all unseen or underground services on the worksite and mark the same prior to us commencing any of the Services (including electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be present on the worksite).
- 25.2. You agree that we are in no way liable for any damages, expenses or fines incurred as a result of any unseen or underground services that are not precisely located and marked by you in accordance with clause 25.1.

26. PROVISION OF CONCRETE

- 26.1. We give no guarantee (expressed or implied) as to the length of time the curing process will take to avoid cracking of the concrete (that may occur naturally such as hairline cracking), due to weather conditions that prolong or accelerate the curing process of the concrete.
- 26.2. You agree that concrete is a natural material and is inherently variable. The concrete may contain blow holes, air voids and minor colour variations due to factors beyond our control (including but not limited to, an oxide containing concrete curing at differing rates, variations in ground moisture under the concrete, partial shading of the worksite and/or weather variations during the pour/curing of the concrete).
- 26.3. We shall not be liable for any damage that is caused to the concrete by not following our recommendations, including:
- to water the concrete periodically to limit the risk of potential cracking due to weather conditions; and
 - that no foot traffic or furniture is to be on the concrete for a minimum of forty-eight (48) hours from the completion of the Services.
- 26.4. You agree that it is your responsibility to organise and protect the concrete once the Services have been completed and we will not be responsible for any damage that is caused by any third party.
- 26.5. Coarse aggregate segregation can lead to a variable dispersion of aggregates, which can be an aesthetic issue in exposed aggregate concrete and in concrete made with alluvial aggregates that contain driftwood or other materials which may be visible on the surface. We shall not be responsible for any exposed aggregates that are inherent with the Goods and cause an aesthetic issue in the concrete finish.
- 26.6. All finished work shall be assessed in accordance with the New Zealand Standard 3114:1987 (specification for concrete surface finishes), which states that finishes need to be assessed from a distance of 3 metres.
- 26.7. You shall supply an area that is suitable for washing out our equipment and for depositing any unused concrete or slurry.

27. HEALTH AND SAFETY AT WORK ACT 2015

- 27.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act, as well as all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 27.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as notify us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 27.3. Each party must consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Goods or Services (including in connection with the delivery of the Goods or Services).

28. PLANS AND SPECIFICATIONS

- 28.1. Where you supply us with any plans, specifications or other technical information, you shall be responsible for providing accurate data and we shall be entitled to rely on the accuracy of any plans, specifications or other technical information supplied by you.
- 28.2. We are not responsible for any errors in the Goods or Services or for additional expenses that are caused by you supplying inaccurate plans, specifications or other technical information.

29. COMPLIANCE AND CONSENTS

29.1. You agree to obtain (at your expense) all approvals, consents and licences that may be required (including geotechnical data or any other reports required for the completion of the Services).

30. CONSTRUCTION CONTRACTS ACT 2002

30.1. If you are a 'residential occupier' (as defined in Part 1, section 5 of the Construction Contracts Act 2002 (CCA)), then you agree that we shall have the right to suspend any Services by providing five (5) days written notice, should a payment claim be served on you and an Event of Default occurs, in accordance with section 24A in Part 2, subpart 4 of the CCA.

30.2. Should we suspend the Services it shall not be considered a breach of this Agreement and we are not liable for any losses or expenses that you incur due to the suspension of Services under clause 30.1.

30.3. In the event the Services are suspended, we shall be entitled to an extension of time to complete any Services that remain incomplete under this Agreement and you agree that:

- (a) we retain the right to cancel this Agreement whilst the Services are suspended and all other rights available to us in this Agreement shall remain in full force and effect; and
- (b) we may exercise any rights for payments or adjudication of disputes under Part 2 and Part 3 of the CCA.

31. THIRD PARTY SUPPLIERS

31.1. We shall be entitled to engage third party suppliers (including subcontractors) and you agree that we have your authority to enter into contracts with such third party suppliers in your name.

31.2. If you request and authorise us to arrange the provision of Goods or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Goods or Services to you directly by a third party supplier. You agree to pay all Amounts Owing in accordance with this Agreement in the event we arrange any supply of Goods or Services that are provided directly to you by a third party supplier.

31.3. No warranty is offered by us regarding the quality of the third party supplier's workmanship, including whether their recommendations are appropriate or accurate.

32. LIABILITY

32.1. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement (including any unintentional misrepresentation made to you by us regarding any of the Goods or Services).

32.2. To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.

32.3. To the extent permitted by law, our total liability under or in connection with this Agreement and the Goods or Services is limited to, at our option:

- (a) in the case of Goods, any one or more of the following: (i) the replacement of the Good(s) or the supply of equivalent Good(s); (ii) the repair of the Good(s); (iii) the payment of the expense of replacing the Good(s) or of acquiring equivalent Good(s); or (iv) the payment of the expense of having the Good(s) repaired; or
- (b) in the case of Services: (i) supplying the Services again; or (ii) the payment of the expense of having the Services supplied again.

32.4. If, notwithstanding clause 31, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:

- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Goods or Services; or (ii) the actual loss or damage suffered by you; and
- (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, customers, opportunities or loss of or damage to reputation.

32.5. The limitations and exclusions on liability in this clause 32 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.

32.6. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:

- (a) for the acts or omissions of any third party;
- (b) any act or omissions performance in accordance with your instructions (or instructions from your authorised representatives); or
- (c) to any third party.

33. GENERAL

33.1. Governing law: This Agreement is governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of New Zealand.

33.2. Entire Agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.

33.3. Priority: To the extent of an inconsistency between:

- (a) this Agreement;
- (b) all other schedules to this Agreement;
- (c) any privacy or data agreement (if applicable); and
- (d) the order of priority set out above will apply (with (a) having the highest priority).

33.4. Subcontracting: We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.

33.5. Assignment: You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owing by you.

33.6. Amendments: Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws in which case we can give you notice of any such amendments required and you will be bound by the same.

33.7. Notices: Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.

33.8. Force majeure: We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).

33.9. Severability: If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be modified then it will be severed and all remaining rights in this Agreement will continue in full force and effect.

33.10. Waiver: A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

33.11. Termination: Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.

33.12. Survival: Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.

33.13. Rights of third parties: This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.

33.14. Relationship: We will provide Goods or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.

33.15. Non-exclusive: This Agreement is not exclusive and you agree that there are no restrictions on us to provide any Goods or Services to any other person.

33.16. Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or by email exchange of pdf copies) which together will constitute the one instrument.