

Anderson Fencing and Earthworks Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Estimate, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "AFE" means Anderson Fencing and Earthworks Limited (or otherwise referred to as the "Vendor"), its successors and assigns or any person acting on behalf of and with the authority of Anderson Fencing and Earthworks Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting AFE to provide the Works as specified in any proposal, estimate, 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), Goods, services or Materials supplied by AFE to the Client at the Client's request from time to time (where the context so permits the terms 'Works', 'Goods', 'Services' or 'Materials' shall be interchangeable for the other).
- 1.5 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between AFE and the Client in accordance with clause 6 below.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client's website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using AFE's website, then the Client shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.

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 in to, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may be amended in writing or by email with the consent of both parties. Once the Client has been notified of any amendments the Client is deemed to accept these amendments if they request AFE to supply any Works.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a Client Information Form with AFE, and if necessary, a credit limit has been established.
- 2.5 If the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, AFE reserves the right to refuse delivery.
- 2.6 All excess Materials will remain the property of AFE and shall be removed on completion of the Works, unless the Materials have become fixtures, the Client must return the Materials to AFE on request.
- 2.7 If AFE has been requested by the Client to prepare an estimate that involves multiple site visits or third-party involvement (including but not limited to engineers, surveyor or local councils), all costs involved will be charged to the Client irrespective of whether or not the Works proceed.
- 2.8 The Client acknowledges and accepts that whilst AFE may provide an initial consultation of one (1) hour's duration, should the Client subsequently engage AFE, then that consultation shall be considered part of the Services and shall therefore become chargeable.
- 2.9 The Client acknowledges and accepts that where the Client wishes to postpone the Works that AFE must be notified within 1 working day (24 hours) of the proposed commencement date as agreed to between both parties. Where such notice is received inside this timeframe, AFE reserves the right to charge a reasonable fee for the delay in the commencement of the Works.
- 2.10 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.
- 2.11 The Client shall be responsible for all costs associated with the removal and dumping of all contaminated soil/hazardous material unless otherwise agreed in writing with AFE. Where AFE agrees to remove any contaminated soil/hazardous materials on the Client's behalf, this shall be treated as a variation as per clause 6.2.
- 2.12 Any remote-control keys the seller is to supply with the Materials will only be released to the Client once full payment is received.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that AFE 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 AFE 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 AFE in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of AFE; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 Clerical errors or omissions, whether in computation or otherwise in the estimate, acknowledgement or invoice shall be subject to correction.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to AFE as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies AFE in writing that said person is no longer the Client's duly authorised representative).
- 4.2 If the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise AFE in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to AFE for all additional costs incurred by AFE (including AFE's profit margin) in providing any Works, Materials or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

- 5.1 The Client shall give AFE 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's, contact details, change of trustees, change of directors or business practice). The Client shall be liable for any loss incurred by AFE because of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At AFE's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by AFE to the Client in respect of Works performed or Materials supplied; or
 - (b) AFE's estimated Price (subject to clause 6.2) which shall be binding upon AFE provided that the Client shall accept AFE's estimate in writing within thirty (30) days.
- 6.2 AFE reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to site access, availability of excavation machinery, presence of tree stumps, removal thereof and chasing of the roots, changes to the scope of Works required, ready availability of Materials, variations in quantity or volume of Materials to be supplied, prerequisite work by a third party not being completed or being non-compliant, inaccurate measurements, plans or specifications supplied by the Client, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the

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Works; or

- (d) in the event of increases to AFE in the cost of labour, materials or any other costs which may be incurred which are beyond AFE's control.
- 6.3 Variations will be charged for based on AFE's estimate, and will be detailed in writing, and shown as variations on AFE's invoice. The Client shall be required to respond to any variation submitted by AFE within ten (10) working days. Failure to do so will entitle AFE 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 Unless otherwise stated AFE's estimated price does not include, dewatering shoring, retaining walls or any temporary support to neighbouring buildings fences or footpaths, filling of soft spots, compaction testing, sediment fence/storm water control, covering soil stock piles, cutting kerb and channel or footpaths, rock breaking, dust / silt control, public barricades or signage.
- 6.5 AFE also reserves the right to change the Price if a variation to the Goods supplied is requested by the Client or in the event of increases to AFE in the cost of labour or Goods, different from the accepted estimated Price, (if delivery of Goods is delayed by the Client beyond 60 days from the acceptance of the estimated Price) which are beyond AFE's control.
- 6.6 At AFE's sole discretion a non-refundable deposit may be required.
- 6.7 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by AFE, which may be:
- (a) immediately payable at the time the Client places an order for any indent Materials or non-stocklist item that AFE is to commission from any other third-party supplier/s; or
 - (b) on completion of the Works; or
 - (c) by way of progress payments in accordance with AFE'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; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by AFE.
- 6.8 Payment may be made by electronic/on-line banking or by any other method as agreed to between the Client and AFE.
- 6.9 AFE may in its discretion allocate any payment received from the Client towards any invoice that AFE determines and may do so at the time of receipt or at any time afterwards. On any default by the Client AFE may re-allocate any payments previously received and allocated. In the absence of any payment allocation by AFE, payment will be deemed to be allocated in such manner as preserves the maximum value of AFE's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.10 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 AFE nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by AFE is a claim made under the Construction Contracts Act 2002.
- 6.11 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to AFE an amount equal to any GST AFE must pay for any supply by AFE under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is AFE's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that AFE claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond AFE's control, including but not limited to forecast weather conditions (including without limitation, extreme temperatures) or any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify AFE that the site is ready.
- 7.3 AFE may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 The Client acknowledges that when AFE arrives on the worksite, changes in methodology may occur, this may affect the original estimate and AFE shall reserve the right to provide a re-estimate based on any new information that becomes apparent.
- 7.5 Any time specified by AFE for delivery of the Works is an estimate only and AFE 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 AFE is unable to supply or continue the Works as agreed solely due to any action or inaction of the Client, then AFE 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.

8. Dimensions, Plans and Specifications

- 8.1 AFE shall be entitled to rely on the accuracy of any plans, maps, specifications, and other information provided by the Client. The Client acknowledges and agrees that if any of this information provided by the Client is inaccurate, AFE accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, or other information.
- 8.2 All customary building industry tolerances shall apply to the dimensions and measurements of the Works unless AFE and the Client agree otherwise in writing.
- 8.3 Where the Client is to supply AFE with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. AFE shall not be liable whatsoever for any errors in the Works that are caused by incorrect or inaccurate data being supplied by the Client.
- 8.4 In the event the Client gives information relating to measurements and quantities of Materials required in completing the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or AFE places an order based on these measurements and quantities. AFE accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

9. Risk

- 9.1 If AFE retains ownership of the Materials under clause 14 then where AFE 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 the Materials are delivered by AFE or AFE's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 9.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests AFE to leave Materials outside AFE'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. If such Materials are lost, damaged, or destroyed then replacement of the Materials shall be at the Client's expense.
- 9.3 Where AFE has affected delivery, all risk passes to the Client as per clause 9.1 and the Client claims the Materials have been stolen it shall be the Client's responsibility to notify the police and forward evidence to AFE, this shall not excuse the Client from fulfilling their financial obligations under this contract.
- 9.4 Where AFE gives advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Works (including but not limited to, a particular course of action, product selection or the condition of materials supplied by the Client being inferior), and such advice or recommendations are not acted upon, then AFE shall require the Client or their agent to authorise commencement of the Works in writing. AFE shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works nor will such losses or damages be deemed a defect.
- 9.5 AFE warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and Works incidental thereto and AFE shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 9.6 AFE shall not be held liable for any losses, damages or claims resulting from the Client installing the Materials incorrectly or improperly where AFE has supplied the Materials only. Should the Client subsequently request AFE to rectify any such installation undertaken by the Client, AFE shall be entitled to claim all associated costs involved in such remedial Works.
- 9.7 Whilst AFE will take all due care during installation AFE will not accept any responsibility for tiles or pavers damaged during installation.
- 9.8 AFE reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.
- 9.9 If during the Works AFE discovers any fossils, artefacts or any other remains of geological or archaeological interest is discovered AFE reserves the right to halt all Works, remove any of their equipment from the Worksite and immediately notify the Client. Unless subject to clause 28.9, the Client accepts and

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agrees that all additional costs that may be incurred by AFE as a result of any such delays (including but not limited to in the event AFE is unable to remove their equipment from the Worksite, etc.) shall be borne by the Client and shall be treated as a variation in accordance with clause 6.2.

- 9.10 Where AFE is requested to repair or replace damaged or destroyed fencing, AFE shall endeavour to match the existing fence however, the Client accepts that there may be slight variations in colour or profile which is beyond AFE's control.
- 9.11 Where the Client has supplied materials for AFE to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality, and any faults inherent in the materials. AFE 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. If, in AFE's judgement, the Client supplied Materials do not come up to the required industry standard, and AFE have to supply replacement Materials, those replacement costs will be passed on to the Client.
- 9.12 The Client acknowledges that Materials supplied may exhibit variations in shade, colour, texture, markings, veining, and contain natural fissures, occlusions, and indentations, surface, and finish, and may fade or change colour over time. AFE will make every effort to match batches of product supplied and to match new Materials to existing items in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 9.13 Where fencing is installed on a retaining wall AFE shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 9.14 AFE shall be entitled to rely on the accuracy of any surveyed boundary lines, plans, specifications and other information supplied by the Client. The Client acknowledges and agrees that in the event that any of this information is inaccurate, AFE accepts no responsibility for any loss, damages, or costs resulting from this inaccurate information.
- 9.15 AFE shall accept no responsibility for any works undertaken by any third-party contractor employed by the Client. If the Client believes that they have any claim in relation to the works undertaken by that third party, then said claim must be made direct to the third-party contractor in the first instance. Payment for all other associated works shall be paid direct to that third-party contractor.
- 9.16 If third-party damages work already undertaken by AFE, there is no liability to AFE and AFE will be allowed to charge a reasonable fee to fix the damage caused.
- 9.17 The Client acknowledges that, whilst AFE shall make endeavours to remove from the Worksite all rubbish, excavated material, vegetation, demolished or dismantled structures, AFE shall not be held liable for any small amounts of rubbish and the like, remaining at the Worksite.

10. Client's Responsibilities

- 10.1 The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Client fails to comply with this clause then AFE accepts no responsibility for installation decisions that need to be made by AFE in the Client's absence.
- 10.2 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow AFE clear access along the proposed fence line prior to commencement of work by AFE unless otherwise agreed in writing between AFE and the Client.
- 10.3 The Client agrees to allocate an area for the accumulation and removal of any rubbish created from the provision of the Works by AFE, and the cost of such rubbish disposal containers and/or rubbish removal services shall be incurred by the Client. The Client acknowledges that, whilst AFE shall make all endeavours to accumulate all rubbish, excavated material, vegetation, demolished or dismantled structures at such area, AFE shall not be held liable for any small amounts of rubbish, and the like, remaining at the site.
- 10.4 It is the intention of AFE and agreed by the Client that it is the responsibility of the Client to provide any heavy equipment and or have erected scaffolding to enable the Works to be undertaken (where in AFE's opinion it is deemed necessary). It is also agreed that all scaffolding and or heavy equipment will comply with industry safety standards and that any person erecting the scaffolding or operating heavy equipment shall be suitably qualified to ensure its safe and proper use and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 10.5 The Client acknowledges and agrees that in the event AFE requires access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the landowner to use the above-mentioned property throughout the process or delivering the Works. In the event the landowner denies access or use of the land or property, the Client shall be liable for all costs incurred by AFE in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
- 10.6 The Client shall provide AFE with a suitable free power source, access to clean water and toilet facilities.

11. Underground Locations

- 11.1 Prior to AFE commencing any work the Client must advise AFE of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telecommunication cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst AFE will take all care to avoid damage to any underground services the Client agrees to indemnify AFE in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. Access

- 12.1 The Client shall ensure that AFE has clear and free access to the worksite at all times to enable them to undertake the Works(including inspections, gaining signatures for required documents etc), and that such access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by AFE. AFE shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, timber structures, trees, shrubs, plants, driveways and concreted or paved or grassed areas) unless due to the negligence of AFE.

13. Compliance with Laws

- 13.1 The Client and AFE 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.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") AFE agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.

14. Title

- 14.1 AFE and the Client agree that ownership of the Materials shall not pass until:
- the Client has paid AFE all amounts owing to AFE; and
 - the Client has met all its other obligations to AFE.
- 14.2 Receipt by AFE 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.
- 14.3 It is further agreed that:
- until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to AFE on request;
 - the Client holds the benefit of the Client's insurance of the Materials on trust for AFE and must pay to AFE the proceeds of any insurance in the event of the Materials being lost, damaged, or destroyed; and
 - the production of these terms and conditions by AFE shall be enough evidence of AFE's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with AFE to make further enquiries; and
 - 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 AFE and must pay or deliver the proceeds to AFE on demand; and
 - 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 AFE and must sell, dispose of or return the resulting product to AFE as it so directs; and
 - unless the Materials have become fixtures the Client irrevocably authorises AFE to enter any premises where AFE believes the Materials are kept and recover possession of the Materials; and

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- (g) AFE may recover possession of any Materials in transit whether delivery has occurred; and
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of AFE; and
- (i) AFE may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

15. Personal Property Securities Act 1999

- 15.1 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 AFE for Works – that have previously been supplied and that will be supplied in the future by AFE to the Client.
- 15.2 The Client hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:
- (a) for all Goods previously supplied by the Vendor to the Client (if any); and
 - (b) for all of its present and after acquired Goods; and
 - (c) for intellectual property arising out of or in connection with the Services.
- 15.3 The Client agrees to grant a "Purchase Money Security Interest" to the Vendor in respect to all amounts owed by the Client to the Vendor, as that term is defined in the PPSA.
- 15.4 Where Goods in respect of which title has not passed to the Client are sold by the Client in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Client for the Vendor in terms of section 45 of the PPSA:
- (a) Where any proceeds of sale are placed in the Client's bank account the funds in the Client's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale; and
 - (b) Where any payments are made from the Client's bank account otherwise than to AFE payment shall be deemed to have been made from all other funds in the Client's bank account and not from funds held on trust for the Vendor; and
 - (c) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Client.
- 15.5 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 AFE may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
 - (b) indemnify, and upon demand reimburse, AFE 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; and
 - (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 AFE; and
 - (d) immediately advise AFE of any material change in its business practices of selling Materials which would result in a change proceeds derived from such sales.
- 15.6 AFE and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.7 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.8 Unless otherwise agreed to in writing by AFE, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.9 The Client shall unconditionally ratify any actions taken by AFE under clauses 15.1 to 15.8.
- 15.10 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of AFE 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).
- 16.2 The Client indemnifies AFE from and against all AFE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AFE's rights under this clause.
- 16.3 The Client irrevocably appoints AFE and each director of AFE as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

17. Defects

- 17.1 The Client shall inspect the Materials on delivery and shall within three (3) days of delivery (time being of the essence) notify AFE of any alleged defect, shortage in quantity, damage or failure to comply with the description or estimate. The Client shall afford AFE an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which AFE has agreed in writing that the Client is entitled to reject, AFE's liability is limited to either (at AFE's discretion) replacing the Materials or repairing the Materials.
- 17.2 Materials will not be accepted for return other than in accordance with 17.1 above.
- 17.3 AFE has no obligation to accept the return of Materials for credit.
- 17.4 AFE may (at its sole discretion) accept the return of Materials for credit but this may incur a handling fee of fifteen percent (15%) of the returned Materials plus any freight charges

18. Warranty by the Company

- 18.1 Subject to the conditions of warranty set out in clause 18.2 AFE warrants that if any defect in any workmanship of AFE becomes apparent and is reported to AFE within twelve (12) months of the date of delivery or completion, then AFE will either (at AFE's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 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 Customer to properly maintain any Materials; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by AFE or the Manufacturer; 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 (see clause 28.9); or
 - (vi) failure of the cable at a point other than the location of the repairs undertaken by AFE.
 - (b) the warranty shall cease and AFE shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without AFE's consent; or
 - (c) in respect of all claims AFE shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 18.3 For Materials not manufactured by AFE, the warranty shall be the current warranty provided by the manufacturer of the Materials. AFE 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.

19. Consumer Guarantees Act

- 19.1 The Client agrees that if they are acquiring Materials for the purposes of a trade or business (as that phrase is defined in the CGA) to the extent permitted by law the provisions of the Consumer Guarantees Act 1993 will not apply to the supply of Materials by AFE to the Client.

20. Intellectual Property

- 20.1 Where AFE has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs,

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- drawings, documents, plans, schedules and products shall remain vested in AFE, and shall only be used by the Client at AFE's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of AFE.
- 20.2 The Client warrants that all designs, specifications or instructions given to AFE will not cause AFE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify AFE against any action taken by a third party against AFE in respect of any such infringement.
- 20.3 The Client agrees that AFE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which AFE has created for the Client.
- 21. Defaults and Overdue Invoices**
- 21.1 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 AFE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes AFE any money the Client shall indemnify AFE from and against all costs and disbursements incurred by AFE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AFE's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies AFE may have under this Contract, if a Client has made payment to AFE, 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 AFE under this clause 21, 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.
- 21.4 Without prejudice to AFE's other remedies at law AFE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AFE shall, whether due for payment, become immediately payable if:
- any money payable to AFE becomes overdue, or in AFE's opinion the Client will be unable to make a payment when it falls due; or
 - the Client has exceeded any applicable credit limit provided by AFE; or
 - 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 22. Cancellation**
- 22.1 Without prejudice to any other rights or remedies AFE 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 five (5) working days of receipt by the Client of such notice/s) then AFE may suspend the Works immediately. AFE will not be liable to the Client for any loss or damage the Client suffers because AFE has exercised its rights under this clause.
- 22.2 AFE 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 AFE shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to AFE for Works already performed. AFE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 If the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by AFE as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products made to the Client's specifications, or for non-stock list items will not be accepted once production has commenced, or an order has been placed.
- 23. Privacy Policy**
- 23.1 All emails, documents, images or other recorded information including Personally Identifiable Information (PII) as defined and referred to in clause 23.3 held or used by AFE is considered confidential. AFE acknowledges its obligation in relation to the handling, use, disclosure and processing of PII pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). AFE acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's PII, held by AFE that may result in serious harm to the Client, AFE will notify the Client in accordance with the Act and/or the GDPR. Any release of such PII 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.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to AFE in respect of Cookies where transactions for purchases/orders transpire directly from AFE's website. AFE agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection the Client's Personal Information such as:
- IP address, browser, email Client type and other similar details; or
 - tracking website usage and traffic; or
 - reports which are available to AFE when AFE sends an email to the Client; so AFE may collect and review that information (collectively "PII")
- 23.3 If the Client consents to AFE's use of Cookies on AFE's website and later wish to withdraw that consent, the Client may manage and control AFE's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.4 The Client authorises AFE or AFE's agent to:
- access, collect, retain and use any information about the Client;
 - (including, name, address, D.O.B, occupation, driver's license details, electronic contact (e.g. email, Facebook or Twitter 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
 - for the purpose of marketing products and services to the Client.
 - disclose information about the Client, whether collected by AFE from the Client directly or obtained by AFE from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.5 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.6 The Client shall have the right to request AFE for a copy of the PII about the Client retained by AFE and the right to request AFE to correct any incorrect PII about the Client held by AFE.
- 24. Suspension of Works**
- 24.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- AFE 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:
 - 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
 - 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
 - the Client has not complied with an adjudicator's notice that the Client must pay an amount to AFE by a date; and
 - AFE has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - if AFE suspends work, it:
 - is not in breach of Contract; and
 - 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
 - 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.
 - if AFE exercises the right to suspend work, the exercise of that right does not:
 - affect any rights that would otherwise have been available to AFE under the Contract and Commercial Law Act 2017; or
 - enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of AFE suspending work under this provision.
 - due to any act or omission by the Client, the Client effectively precludes AFE from continuing the Works or performing or complying with AFE's obligations under this Contract, then without prejudice to AFE's other rights and remedies, AFE may suspend the Works immediately after serving on the

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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 AFE as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

- 24.2 If pursuant to any right conferred by this Contract, AFE suspends the Works and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, AFE shall be entitled to terminate the Contract, in accordance with clause 22.

25. Services of Notices

- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person; or
 - (b) by leaving it at the address of the other party as stated in this Contract; or
 - (c) by sending it by registered post to the address of the other party as stated in this Contract; or
 - (d) if sent by email to the other party's last known email address. or
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

26. Insurance

- 26.1 AFE shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.
- 26.2 In the event of any breach of this contract by AFE, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of AFE exceed the cost of the Services supplied.
- 26.3 While AFE provides the Services in good faith and to the best of its ability, AFE is not liable for any costs, damages or loss suffered by the Client as a result of omissions or inaccuracies in the information provided. The Client accepts AFE's Services on the basis that to the maximum extent permitted by law, any liability of AFE for the Services provided under the contract is hereby excluded. This is regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise

27. Trusts

- 27.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether AFE may have notice of the Trust, the Client covenants with AFE 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; and
 - (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;
 - (i) the Client will not without consent in writing of AFE (AFE will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events: the removal, replacement or retirement of the Client as trustee of the Trust; or
 - (ii) any alteration to or variation of the terms of the Trust; or
 - (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 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 Otago.
- 28.4 AFE 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 AFE of these terms and conditions (alternatively AFE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 28.5 AFE may license 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 license or assign without the written approval of AFE.
- 28.7 AFE 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 AFE's sub-contractors without the authority of AFE.
- 28.8 The Client agrees that AFE 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 AFE to provide Works to the Client.
- 28.9 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm, 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.