

BEGG SECURITY GROUP LIMITED

Terms and Conditions of Trade

1. Definitions

- a. **"Begg"** means the Begg Security Group Limited, company named in the Credit Account Application and its successors and assigns.
- b. **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Begg to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - i. if there is more than one Client, is a reference to each Client jointly and severally; and
 - ii. if the Client is a partnership, it shall bind each partner jointly and severally; and
 - iii. if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - iv. includes the Client's executors, administrators, successors and permitted assigns.
- c. **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- d. **"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 and 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 Begg'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.
- e. **"Goods"** means all Goods or Services supplied by Begg to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- f. **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Begg and the Client in accordance with clause 6 below.

2. Acceptance

- a. The parties acknowledge and agree that:
 - i. they have read and understood the terms and conditions contained in this Contract; and
 - ii. the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods and/or Services
- b. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- c. Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- d. In the event that Begg is required to provide the Services urgently, that may require Begg staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Begg reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Begg and the Client.
- e. The Client acknowledges and accepts that the supply of Goods:
 - i. on credit shall not take effect until the Client has completed a credit application with Begg and it has been approved with a credit limit established for the account.
 - ii. in the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, Begg reserves the right to refuse Delivery; and
 - iii. for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Begg reserves the right to vary the Price with alternative Goods (or components of the Goods) as per clause 6.b, subject to prior confirmation and agreement of both parties.
- f. The Client agrees that they shall upon request from Begg provide evidence that:
 - i. they are the owner of the property upon which the Goods are to be provided (including, but not limited to the cutting of keys, providing access/ entry into property as a result of being locked out etc.) or Services are to be undertaken; or
 - ii. where the Client is not the owner of the property, that they have the consent of the owner for the premises upon which the Services are to be undertaken or Goods to be provided.
- g. In the event that the Goods and/or Services provided by Begg are the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by Begg and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- h. The Client shall ensure that all voice codes, passwords, radio keys and other security devices are kept secure and provided only to those persons who reasonably require access to the premises.
- i. These terms and conditions are meant to be read in conjunction with the Begg Account Application Form, and if there are any inconsistencies between the two documents then the terms and conditions contained herein shall prevail.
- j. 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.

3. Errors and Omissions

- a. The Client acknowledges and accepts that Begg shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - i. resulting from an inadvertent mistake made by Begg in the formation and/or administration of this Contract; and/or

- ii. contained in/omitted from any literature (hard copy and/or electronic) supplied by Begg in respect of the Services.
- b. If such an error and/or omission occurs in accordance with clause 3.a, and is not attributable to the negligence and/or wilful misconduct of Begg; the Client:
 - i. shall not be entitled to treat this Contract as repudiated nor render it invalid; but
 - ii. shall not be responsible for any additional costs incurred by Begg arising from the error or omission.

4. Authorised Representatives

- a. The Client acknowledges that Begg shall (for the duration of the Services) liaise directly with one (1) authorized representative, and that once introduced as such to Begg, that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to Begg for all additional costs incurred by Begg (including Begg profit margin) in providing any Services, or variation/s requested thereto by the Client's duly authorised representative.
- b. The Client shall absolve Begg from any claims, costs, and damages arising from the performance of such Services.

5. Change in Control

- a. The Client shall give Begg 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Begg as a result of the Client's failure to comply with this clause.

6. Price and Payment

- a. At Begg sole discretion the Price shall be either:
 - i. as indicated on any invoice provided by Begg to the Client; or
 - ii. the Price as at the date of Delivery of the Goods according to Begg's current price list; or
 - iii. Begg's quoted Price (subject to clause 6.b) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- b. Begg reserves the right to change the Price:
 - i. If a variation to the Goods which are to be supplied is requested; or
 - ii. If a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - iii. If during the course of the Services, the Goods are not or cease to be available from Begg's third party suppliers, then Begg reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - iv. Where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, obscured site defects which require remedial work (e.g. poor existing wiring, etc.), health hazards and safety considerations (such as the discovery of asbestos) etc.) which are only discovered on commencement of the Services; or
 - v. In the event of increases to Begg in the cost of labour or materials (including, but not limited to, increases to freight charges, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Begg control.
- c. Variations will be charged for on the basis of Begg's quotation, and will be detailed in writing, and shown as variations on Begg's invoice. The Client shall be required to respond to any variation submitted by Begg within ten (10) working days. Failure to do so will entitle Begg 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.
- d. At Begg sole discretion a reasonable non-refundable deposit may be required.
- e. Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Begg, which may be:
 - i. on Delivery of the Goods;
 - ii. by way of instalments/progress payments in accordance with Begg's payment schedule;
 - iii. for trade approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - iv. the date specified on any invoice or other form as being the date for payment; or
 - v. failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Begg.
- f. Unless otherwise stated, a trade discount shall be included in the quoted Price, however such discount shall become null and void, if payment is not made by the due date stated on the invoice and/or statement. In such an event of late payment Begg reserves the right to vary the Price and any discounts or special prices are revoked.
- g. Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Begg.
- h. Begg may in its discretion allocate any payment received from the Client towards any invoice that Begg determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Begg may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Begg, payment will be deemed to be allocated in such manner as preserves the maximum value of Begg's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- i. Where clause 6.e(ii) applies to the provision of the Goods and the performance of the Services carried out by Begg in relation to construction work (as defined in the Construction Contracts Act 2002), then any invoice issued by Begg in relation to the Goods and Services is a payment claim for the purposes of Section 20 of the Construction Contract Act 2002.

- j. 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 Begg nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Begg is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.j prevents the Client from the ability to dispute any invoice.
- k. Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Begg an amount equal to any GST Begg must pay for any supply by Begg under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

- a. Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
 - i. The Client or the Client's nominated carrier takes possession of the Goods at Begg's address; or
 - ii. Begg (or Begg's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- b. The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- c. Begg may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- d. Any time specified by Begg for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Begg 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that Begg is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Begg shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

- a. Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- b. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Begg is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Begg is sufficient evidence of Begg's rights to receive the insurance proceeds without the need for any person dealing with Begg to make further enquiries.
- c. If the Client requests Begg to leave Goods outside Begg's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- d. Where Begg gives advice or recommendations to the Client, or the Client's agent, with specific instructions regarding the use of the Goods and such advice or recommendations are not acted upon then Begg shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent purchase of the Goods.
- e. Begg shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Begg accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- f. Where Begg is:
 - i. required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Begg shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto; and
 - ii. is to supply Goods (including but not limited to, doors etc.) which require the Client to paint and seal the Goods, Begg will not be liable for any loss, costs or damages where the Client does not follow Begg recommendation as to the number of coats of paint and the use of a sealant on installation of the Goods.
- g. Where the Client has engaged in Begg for the purposes of gaining access/entry to a property/vehicle as a result a lock out, the Client acknowledges and accepts that:
 - i. Begg is not acting in an unlawful and fraudulent manner and is not deemed to be a break-in;
 - ii. the Services will not infringe on the right of other person's or the property's security; and
 - iii. Begg will not be liable for any costs, damages, losses and claims as a result of any damage to the property/vehicle in the provision of Services.
- h. The Client acknowledges and accepts that all electronic security systems, cctv cameras and any similar devices installed at or attached to their premises are;
 - i. for monitoring and detection purposes only and should not be regarded as life saving devices; and
 - ii. do not guarantee that the site will be free from malicious damage or loss caused by attack and/or breaking or entering.
- i. It shall be the Client's responsibility:
 - i. to ensure the security system equipment is tested and maintained to full operational condition;
 - ii. for all phone calls emanating from the security system panel; and
 - iii. to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
- j. The Client acknowledges and agrees that:
 - i. all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Begg fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Begg;

- ii. while Begg may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Begg has given these in good faith, and are estimates which are variable due to factors out of Begg control;
 - iii. Begg is only responsible for Goods that are replaced by Begg and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify Begg against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
 - iv. Begg does not warrant that the Goods supplied by Begg will render the premises, or any occupant of the premises, secure. Begg shall not be liable for any loss (including consequential loss) or damage suffered by the Client, whether arising from Begg negligence or otherwise, resulting from the Client's use of or reliance upon the Goods; and
 - v. Begg shall not be held liable for any damage to any glass surfaces as a result of installing Goods and/or in the provision of the Services unless due to the negligence of Begg.
- k. Begg will not be responsible for any:
- i. compliance of building warrant of fitness around evacuation plans, disability access and regulations around the use of deadlocks. It shall be the responsibility of the Client to ensure that the Goods ordered are suitable for their intended use; and
 - ii. inadvertent compromise of any lockdown plans that schools may have.
- l. The Client shall, at their own expense, maintain the Goods in good working order and in accordance with the manufacturer's requirements, including but not limited to, recharging or replacing the batteries on a timely basis.

9. Insurance Claims

- a. If the Client has insurance or other contractual arrangements for the payment of charges due under this Contract, this will not affect the Client's personal liability to pay all charges due under this Contract, except that the Client's liability will be reduced pro-rata to the extent that payments are made to Begg from other such sources. The Client also agrees that they shall be liable and make payment when due for any insurance excess where necessary.
- b. Any work undertaken which is part of an insurance claim is undertaken with the understanding that should the claim be declined, or payment of the claim delayed, the Client is liable for payment of the full Price.

10. Access

- a. The Client shall ensure that Begg has clear and free access to the site at all times to enable them to undertake the Services. Begg shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Begg.

11. Underground/Hidden Locations

- a. Prior to Begg commencing any work the Client must advise Begg of the precise location of all underground/hidden services on the site and clearly mark the same. The underground/hidden mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- b. Whilst Begg will take all care to avoid damage to any underground/hidden services the Client agrees to indemnify Begg 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.a.

12. Compliance with Laws

- a. The Client and Begg shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating to building/construction sites or any other relevant safety standards or legislation pertaining to the Services.
- b. Both parties acknowledge and agree:
- c. to comply with the Building Act 2004 (including any subsequent Amendments), Code of Ethics in respect of all workmanship and building products to be supplied during the course of the Services; and
- d. that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- e. All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- f. Where the Client has supplied products for Begg to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in Begg's opinion, it is believed that the materials supplied are non-conforming products and will not conform with New Zealand regulations, then Begg shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.b.
- g. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- h. Notwithstanding clause 12.a and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), Begg agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

13. Title

- a. Begg and the Client agree that ownership of the Goods shall not pass until:
 - i. the Client has paid Begg all amounts owing to Begg; and
 - ii. the Client has met all of its other obligations to Begg.
- b. Receipt by Begg 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.
- c. It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 13.a:
 - i. the Client is only a bailee of the Goods and must return the Goods to Begg on request;
 - ii. the Client holds the benefit of the Client's insurance of the Goods on trust for Begg and must pay to Begg the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - iii. the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Begg and must pay or deliver the proceeds to Begg on demand;
 - iv. the Client should not convert or process the Goods 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 Begg and must sell, dispose of or return the resulting product to Begg as it so directs;
 - v. the Client irrevocably authorises Begg to enter any premises where Begg believes the Goods are kept and recover possession of the Goods;
 - vi. Begg may recover possession of any Goods in transit whether or not Delivery has occurred;
 - vii. the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Begg; and
 - viii. Begg may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

14. Personal Property Securities Act 1999 ("PPSA")

- a. Upon assenting to these Terms and Conditions in writing the Client acknowledges and agrees that:
 - i. these Terms and Conditions constitute a security agreement for the purposes of the PPSA and a Purchase Money Security Interest ("PMSI") is granted in priority to all other creditors by the Client in favour of Begg; and
 - ii. a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by Begg to the Client, and the proceeds from the sale of Goods to secure all of the Client's obligations to Begg.
- b. The Client undertakes to:
 - i. sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Begg may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - ii. indemnify, and upon demand reimburse, Begg for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - iii. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Begg; and
 - iv. immediately advise Begg of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- c. Unless otherwise agreed to in writing by Begg, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- d. The Client shall unconditionally ratify any actions taken by Begg under clauses 14.a to 14.c.
- e. Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- a. In consideration of Begg agreeing to supply the Goods, 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, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- b. The Client indemnifies Begg from and against all Begg's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Begg's rights under this clause.
- c. The Client irrevocably appoints Begg and each director of Begg as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects and Returns

- a. The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Begg of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Begg an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client fails to comply with these provisions the Goods shall be

- presumed to be free from any defect or damage. For defective Goods, which Begg has agreed in writing that the Client is entitled to reject, Begg's liability is limited to either (at Begg's discretion) replacing the Goods or repairing the Goods.
- b. Goods will not be accepted for return other than in accordance with 16.a above, and provided that:
 - i. Begg has agreed in writing to accept the return of the Goods; and
 - ii. the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date; and
 - iii. Begg will not be liable for Goods which have not been stored or used in a proper manner; and
 - iv. the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
 - c. If Begg accepts that the Client is entitled to reject the Goods following their return pursuant to clause 16.b.ii Begg will reimburse the Client's actual and reasonable costs of return Delivery.
 - d. Begg may (in its discretion) accept the return of non-defective Goods for credit but this may incur a handling fee of thirty percent (30%) of the value of the returned Goods plus any freight.
 - e. Subject to clause 16.a, non-stocklist/indent items or Goods made to the Client's specifications are not acceptable for credit or return.

17. Warranty

- a. Subject to the conditions of warranty set out in clause 17.b Begg warrants that if any defect in any Goods manufactured or Services provided by Begg becomes apparent and is reported to Begg within thirty (30) days of the date of Delivery (time being of the essence) then Begg will either (at Begg's sole discretion) replace or remedy the defect.
- b. The conditions applicable to the warranty given by clause 17.a are:
 - i. the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 1. failure on the part of the Client to properly maintain any Goods or serviced item; or
 2. failure on the part of the Client to follow any instructions or guidelines provided by Begg; or
 3. any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 4. the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 5. fair wear and tear, any accident or act of God.
 - ii. the warranty shall cease and Begg shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without Begg's consent.
 - iii. in respect of all claims Begg shall not be liable to compensate the Client for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Client's claim.
- c. For Goods not manufactured by Begg, the warranty shall be the current warranty provided by the manufacturer of the Goods. Begg 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 Goods.

18. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

- a. If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("**CGA**") do not apply to the supply of Goods by Begg to the Client.
- b. Begg agrees to abide by the provisions of the Fair Trading Act 1986 ("**FTA**").

19. Intellectual Property and Trademarks

- a. Where Begg has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Begg. Under no circumstances may such designs, drawings and documents be used without the express written approval of Begg.
- b. The Client warrants that all designs, specifications or instructions given to Begg will not cause Begg to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Begg against any action taken by a third party against Begg in respect of any such infringement.
- c. The Client accepts and acknowledges that trademarks and logos on the Seller's Products always remains Begg's property.
- d. The Client must not use any of Begg's trademarks without written permission.
- e. Without limiting clauses 19.c or 19.d the Client agrees that they will not use any of Begg's trademarks:-
 - i. in or as the whole or part of the Client's own trademarks;
 - ii. on the Client's website or in any marketing or promotional materials; or
 - iii. in connection with activities, products or services that are not Begg's.

20. Default and Consequences of Default

- a. 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 Begg's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- b. If the Client owes Begg any money the Client shall indemnify Begg from and against all costs and disbursements incurred by Begg in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Begg's collection agency costs, and bank dishonour fees).
- c. Further to any other rights or remedies Begg may have under this Contract, if a Client has made payment to Begg, 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 Begg under this clause 20 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.

- d. Without prejudice to Begg's other remedies at law Begg shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Begg shall, whether or not due for payment, become immediately payable if:
 - i. any money payable to Begg becomes overdue, or in Begg's opinion the Client will be unable to make a payment when it falls due;
 - ii. the Client has exceeded any applicable credit limit provided by Begg;
 - iii. the Client becomes insolvent, 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
 - iv. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

- a. Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- b. If Begg, due to reasons beyond Begg's reasonable control, is unable to deliver any Goods and/or Services to the Client, Begg may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice Begg shall repay to the Client any money paid by the Client for the Goods and/or Services. Begg shall not be liable for any loss or damage whatsoever arising from such cancellation.
- c. The Client may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.
- d. Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Policy

- a. All emails, documents, images or other recorded information held or used by Begg is "**Personal Information**" as defined and referred to in clause 22.c and therefore considered confidential. Begg acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Begg acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Begg that may result in serious harm to the Client, Begg will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- b. Notwithstanding clause 22.a, privacy limitations will extend to Begg in respect of Cookies where the Client utilises Begg's website to make enquiries. Begg 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 of Personal Information such as the Client's:
 - i. IP address, browser, email client type and other similar details;
 - ii. tracking website usage and traffic; and
 - iii. reports are available to Begg when Begg sends an email to the Client, so Begg may collect and review that information ("collectively Personal Information")

If the Client consents to Begg's use of Cookies on Begg's website and later wishes to withdraw that consent, the Client may manage and control Begg's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- c. The Client authorises Begg or Begg's agent to:
 - i. access, collect, retain and use any information about the Client;
 - a. including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
 - b. for the purpose of marketing products and services to the Client.
 - ii. disclose information about the Client, whether collected by Begg from the Client directly or obtained by Begg 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.
- d. Where the Client is an individual the authorities under clause 22.c are authorities or consents for the purposes of the Privacy Act 2020.
- e. The Client shall have the right to request (by e-mail) from Begg, a copy of the Personal Information about the Client retained by Begg and the right to request that Begg correct any incorrect Personal Information.
- f. Begg will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

- g. The Client can make a privacy complaint by contacting Begg via e-mail. Begg will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

23. Confidential Information/Conflict of Interest

- a. The Client assumes liability for all loss or damage suffered by Begg because of breach of confidentiality undertaken by itself, or its employees or agents.
- b. Neither party will use the other party's confidential information without prior written consent (including trade secrets, processes, accounts, pricelists, marketing, designs, databases and all other information held in any form), except strictly for the purposes contemplated by this Contract, and a party may only disclose the other party's confidential information:
 - i. if required by law;
 - ii. to exercise their rights under this Contract;
 - iii. if necessary, to perform their obligations under this Contract;
 - iv. if the other party has provided their written consent to the disclosure;
 - v. if the confidential information is already in the public domain (otherwise than because of disclosure in breach of this Contract).
- c. Begg is obliged to remain vigilant to, and to advise the Client of, any conflict of interest that may potentially impact or harm the Client. To avoid conflict of interest and commercial sensitivities, it is agreed by Begg that any and all information regards the Client (and their business, commercial agenda and employees) shall remain confidential at all times and shall only be disclosed in the event of legal order or obligation.
- d. The obligations of confidentiality shall survive the finalisation or discontinuance of any Contract between the Client and Begg.

24. Suspension of Services

- a. Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
 - i. Begg 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:
 - a. the payment is not paid in full by the due date for payment in accordance with clause 6.e and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - b. 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
 - c. the Client has not complied with an adjudicator's notice that the Client must pay an amount to Begg by a particular date; and
 - d. Begg has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - ii. if Begg suspends work, it:
 - a. is not in breach of Contract; and
 - b. 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
 - c. is entitled to an extension of time to complete the Contract; and
 - d. 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.
 - iii. if Begg exercises the right to suspend work, the exercise of that right does not:
 - a. affect any rights that would otherwise have been available to Begg under the Contract and Commercial Law Act 2017; or
- b. enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Begg suspending work under this provision;
 - i. due to any act or omission by the Client, the Client effectively precludes Begg from continuing the Services or performing or complying with Begg's obligations under this Contract, then without prejudice to Begg's other rights and remedies, Begg may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Begg as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- c. If pursuant to any right conferred by this Contract, Begg suspends the Services and the default that led to that suspension continues un-remedied subject to clause 21.a for at least ten (10) working days, Begg shall be entitled to terminate the Contract, in accordance with clause 21.

25. Service of Notices

- a. Any written notice given under this Contract shall be deemed to have been given and received:
 - i. by handing the notice to the other party, in person;
 - ii. by leaving it at the address of the other party as stated in this Contract;
 - iii. by sending it by registered post to the address of the other party as stated in this Contract;
 - iv. if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - v. if sent by email to the other party's last known email address.
- b. 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. Trusts

- a. If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Begg may have notice of the Trust, the Client covenants with Begg as follows:
 - i. the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - ii. the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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, the trustees and 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;
 - iii. the Client will not during the term of the Contract without consent in writing of Begg (Begg will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 1. the removal, replacement or retirement of the Client as trustee of the Trust;
 2. any alteration to or variation of the terms of the Trust;
 3. any advancement or distribution of capital of the Trust; or
 4. any resettlement of the trust fund or trust property.

27. Dispute Resolution

- a. Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

28. General

- a. 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.
- b. 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 Dunedin Courts of New Zealand.
- c. Subject to the CGA, the liability of Begg and the Client under this Contract shall be limited to the Price.
- d. Begg may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- e. The Client cannot licence or assign without the written approval of Begg.
- f. Begg may elect to subcontract out any part of the Services 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 Begg's sub-contractors without the authority of Begg.
- g. The Client agrees that during the term of the Contract and following the termination of the Contract for any reason, the Client will not attempt to canvass, solicit, entice, encourage or persuade any contractor/s, employee or consultant of Begg to terminate their contract or employment with Begg.
- h. The Client agrees that Begg 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 Begg to provide Goods and/or Services to the Client.
- i. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make any payment due to Begg, following cessation of a Force Majeure.
- j. 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.