
Hiko Electrical Services Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Hiko” means Hiko Electrical Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Hiko Electrical Services Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Hiko to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by Hiko 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).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “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 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 ordering from the 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 ordering Goods via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Hiko and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Hiko and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, Hiko reserves the right to refuse delivery.
- 2.6 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

- 3.1 The Client acknowledges and accepts that Hiko 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 Hiko 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 Hiko in respect of the Services.
- 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 Hiko; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

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 Hiko 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 Services 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 Hiko in writing that said person is no longer the Client’s duly authorised representative).
- 4.2 In the event that 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 Hiko 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 Hiko for all additional costs incurred by Hiko (including Hiko’s profit margin) in providing any works, materials, Services 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 Hiko not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Hiko as a result of the Client’s failure to comply with this clause.

6. Price and Payment

- 6.1 At Hiko’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Hiko to the Client; or

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- (b) Hiko's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Hiko reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Hiko in the cost of labour or Goods which are beyond Hiko's control.
- 6.3 Variations will be charged for on the basis of Hiko's quotation, and will be detailed in writing, and shown as variations on Hiko's invoice. The Client shall be required to respond to any variation submitted by Hiko within ten (10) working days. Failure to do so will entitle Hiko to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Hiko's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Hiko, which may be:
- (a) on completion of the Services; or
 - (b) by way of progress payments in accordance with Hiko's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed;
 - (c) for certain approved Client's, 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;
 - (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 Hiko.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction, or by any other method as agreed to between the Client and Hiko.
- 6.8 Hiko may in its discretion allocate any payment received from the Client towards any invoice that Hiko determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Hiko may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Hiko, payment will be deemed to be allocated in such manner as preserves the maximum value of Hiko's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Hiko nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Hiko is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Hiko an amount equal to any GST Hiko must pay for any supply by Hiko under this or any other agreement 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 and Risk**
- 7.1 At Hiko's sole discretion, any costs of delivery may be charged additionally to the Client.
- 7.2 The Client must take delivery of the Goods, either by receipt or collection, whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Hiko shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.3 Subject to clause 7.4 it is Hiko's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.4 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Hiko claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Hiko's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Hiko that the site is ready.
- 7.5 Any time or date given by Hiko to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Hiko will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 7.6 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.
- 7.7 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Hiko is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Hiko is sufficient evidence of Hiko's rights to receive the insurance proceeds without the need for any person dealing with Hiko to make further enquiries.
- 7.8 If the Client requests Hiko to leave Goods outside Hiko'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.
- 7.9 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Hiko immediately upon any proposed changes. The Client agrees to indemnify Hiko against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 7.10 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to

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roofing) that Hiko, its employees or contractors reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Hiko shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 7.4 above) until Hiko is satisfied that it is safe for the installation to proceed. Hiko may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Services undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price.

8. Accuracy of Client's Plans & Measurements for Orders

- 8.1 Hiko 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, Hiko accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Seller places an order based on these measurements and quantities. Hiko accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

9. Access

- 9.1 The Client shall ensure that Hiko has clear and free access to the work site at all times to enable them to deliver the Goods. Hiko 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 Hiko.

10. Underground Locations

- 10.1 Prior to Hiko commencing any work the Client must advise Hiko 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, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst Hiko will take all care to avoid damage to any underground services the Client agrees to indemnify Hiko 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 10.1.

11. Title

- 11.1 Hiko and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Hiko all amounts owing to Hiko; and
 - (b) the Client has met all of its other obligations to Hiko.
- 11.2 Receipt by Hiko 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to Hiko on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Hiko and must pay to Hiko the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) 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 Hiko and must pay or deliver the proceeds to Hiko on demand.
 - (d) 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 Hiko and must sell, dispose of or return the resulting product to Hiko as it so directs.
 - (e) the Client irrevocably authorises Hiko to enter any premises where Hiko believes the Goods are kept and recover possession of the Goods.
 - (f) Hiko may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) 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 Hiko.
 - (h) Hiko may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to Hiko for Services – that have previously been supplied and that will be supplied in the future by Hiko to the Client.
- 12.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Hiko may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Hiko 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;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Hiko; and

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(d) immediately advise Hiko 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.

- 12.3 Hiko and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Hiko, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by Hiko under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of Hiko 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, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies Hiko from and against all Hiko's costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising Hiko's rights under this clause.
- 13.3 The Client irrevocably appoints Hiko and each director of Hiko as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects

- 14.1 The Client shall inspect the Goods on delivery and shall within thirty (30) days of delivery (time being of the essence) notify Hiko of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Hiko 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 shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Hiko has agreed in writing that the Client is entitled to reject, Hiko's liability is limited to either (at Hiko's discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above.

15. Consumer Guarantees Act 1993

- 15.1 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 do not apply to the supply of Goods by Hiko to the Client.

16. Intellectual Property

- 16.1 Where Hiko has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Hiko. Under no circumstances may such designs, drawings and documents be used without the express written approval of Hiko.
- 16.2 The Client warrants that all designs, specifications or instructions given to Hiko will not cause Hiko to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Hiko against any action taken by a third party against Hiko in respect of any such infringement.
- 16.3 The Client agrees that Hiko may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Hiko has created for the Client.

17. Default and Consequences of Default

- 17.1 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 Hiko's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Hiko any money the Client shall indemnify Hiko from and against all costs and disbursements incurred by Hiko in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Hiko's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Hiko may have under this Contract, if a Client has made payment to Hiko, 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 Hiko under this clause 17 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.
- 17.4 Without prejudice to Hiko's other remedies at law Hiko shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Hiko shall, whether or not due for payment, become immediately payable if:
- any money payable to Hiko becomes overdue, or in Hiko's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by Hiko;
 - 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Compliance with Laws

- 18.1 The Client and Hiko 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.
- 18.2 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Services, and that are not included in the project documents provided by Hiko

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- 18.3 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.
- 18.4 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by Hiko, then Hiko shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.
- 18.5 Any live Services or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". Hiko's live Services procedures are designed to eliminate risk of injury to Hiko's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.
- 18.6 The Client agrees that the site will comply with any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.

19. Cancellation

- 19.1 Without prejudice to any other remedies Hiko may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Hiko may suspend or terminate the supply of Goods to the Client. Hiko will not be liable to the Client for any loss or damage the Client suffers because Hiko has exercised its rights under this clause.
- 19.2 Hiko may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Hiko shall repay to the Client any money paid by the Client for the Goods. Hiko shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Hiko as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 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.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by Hiko is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. Hiko acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A 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"). Hiko acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Hiko that may result in serious harm to the Client, Hiko will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Hiko in respect of Cookies where transactions for purchases/orders transpire directly from Hiko's website. Hiko 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:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Hiko when Hiko sends an email to the Client, so Hiko may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Hiko's website.
- 20.3 The Client authorises Hiko or Hiko's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Hiko from the Client directly or obtained by Hiko 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.
- 20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.5 The Client shall have the right to request Hiko for a copy of the Personal Information about the Client retained by Hiko and the right to request Hiko to correct any incorrect Personal Information about the Client held by Hiko.

21. Suspension of Services

- 21.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) Hiko has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or

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- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Hiko by a particular date; and
 - (iv) Hiko has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if Hiko suspends work, it:
- (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if Hiko exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Hiko under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Hiko suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes Hiko from continuing the Services or performing or complying with Hiko's obligations under this Contract, then without prejudice to Hiko's other rights and remedies, Hiko 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 Hiko as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 21.2 If pursuant to any right conferred by this Contract, Hiko suspends the Services and the default that led to that suspension continues unremedied subject to clause 19.1 for at least ten (10) working days, Hiko shall be entitled to terminate the Contract, in accordance with clause 19.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 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.

23. Trusts

- 23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Hiko may have notice of the Trust, the Client covenants with Hiko as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of Hiko (Hiko will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

24. General

- 24.1 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).
- 24.2 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.
- 24.3 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 Tauranga Courts of New Zealand.
- 24.4 Hiko 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 Hiko of these terms and conditions (alternatively Hiko's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.5 Hiko may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 24.6 The Client cannot licence or assign without the written approval of Hiko.

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- 24.7 Hiko 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 Hiko's sub-contractors without the authority of Hiko.
- 24.8 The Client agrees that Hiko 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 Hiko to provide Goods to the Client.
- 24.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.10 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.