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## Original Stone Company Limited – Terms & Conditions of Trade

### 1. Definitions

- 1.1. "OSC" means Original Stone Company Limited, its successors and assigns or any person acting on behalf of and with the authority of Original Stone Company Limited.
- 1.2. "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting OSC to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3. "Goods" means all Goods or Services supplied by OSC to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4. "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between OSC and the Customer in accordance with clause 7 below.

### 2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2. These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and OSC.
- 2.3. 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.
- 2.4. OSC may at its discretion use or recommend contracted installers to install the Goods. OSC takes care to ensure that these installers are competent, trained and independently insured. Should the Customer need to make any claim in regards to damage, loss, the performance or conduct of such an installer then the Customer agrees to make such claim direct to the installer in the first instance and shall only involve OSC in such a claim if the Customer is unable to resolve the issue with the installer.

### 3. Errors and Omissions

- 3.1. The Customer acknowledges and accepts that OSC 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 OSC 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 OSC 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 OSC; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1. The Customer shall give OSC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by OSC as a result of the Customer's failure to comply with this clause.

### 5. Authorised Representatives

- 5.1. Unless otherwise limited as per clause 5.2 the Customer agrees that should the Customer introduce any third party to OSC as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies OSC in writing that said person is no longer the Customer's duly authorised representative).
- 5.2. In the event that the Customer's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise OSC in writing of the parameters of the limited authority granted to their representative.
- 5.3. The Customer specifically acknowledges and accepts that they will be solely liable to OSC for all additional costs incurred by OSC (including OSC's profit margin) in providing any Goods, Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

### 6. Estimates and Quotations

- 6.1. Unless otherwise specified, pricing shall not provide for:
  - (a) flashings;
  - (b) waste bins; or
  - (c) any additional stonemason costs such as dry stack, raked out, sacked, pointed or lime rendered.
- 6.2. The price is based on stud centres at 400mm.

### 7. Price and Payment

- 7.1. At OSC's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by OSC to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to OSC's current price list; or
  - (c) OSC's estimated Price, with the final Price only being ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to the Customer's approval before proceeding with the Services; or
  - (d) OSC's price (subject to clause 7.2) which will be valid for the period stated in the estimate or quotation or otherwise for a period of thirty (30) days.
- 7.2. OSC reserves the right to change the Price if a variation to OSC's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such

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as poor weather conditions, limitations to accessing the worksite, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to OSC in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and

- insurance charges) and labour) will be charged for on the basis of OSC's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by OSC within ten (10) working days. Failure to do so will entitle OSC 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.
- 7.3. At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this contract is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 7.4. At OSC's sole discretion a non-refundable deposit may be required, in particular for custom made or ordered Goods in which case the deposit may be up to fifty percent (50%) of the Price.
- 7.5. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by OSC, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with OSC's payment schedule;
  - (d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by OSC.
- 7.6. At OSC's sole discretion, a purchase order number may be required.
- 7.7. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and OSC.
- 7.8. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by OSC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.9. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to OSC an amount equal to any GST OSC must pay for any supply by OSC under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.
- 8. Delivery of Goods**
- 8.1. Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at OSC's address; or
  - (b) OSC (or OSC's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 8.2. At OSC's sole discretion the cost of delivery is either included in the Price or is in addition to the Price. It shall be the Customer's responsibility to arrange for insurance during transit.
- 8.3. The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 8.4. Any time specified by OSC for delivery of the Goods is an estimate only and OSC will not be liable for any loss or damage incurred by the Customer 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 OSC is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then OSC shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9. Risk**
- 9.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, OSC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by OSC is sufficient evidence of OSC's rights to receive the insurance proceeds without the need for any person dealing with OSC to make further enquiries. OSC will apply the insurance proceeds as follows:
- (a) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
  - (b) second, in payment of the outstanding Price of any other Goods supplied to the Customer by OSC whether under the terms and conditions or otherwise;
  - (c) third; in payment of any other sums payable to OSC by the Customer on any account;
  - (d) fourth, any balance is to be paid to the Customer.
- 9.3. If the Customer requests OSC to leave Goods outside OSC's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 9.4. Stone is a natural product and has natural colour and shade tones, markings, and veining that may vary from colour samples provided. OSC gives no guarantee (expressed or implied) that colour samples will match the Materials supplied. OSC will make every effort to match colour samples to the Materials supplied but will not be liable in any way whatsoever for colour samples differing from the Materials supplied. Such variations in colour and shade tones, markings, and veining shall not be deemed to be a defect.
- 9.5. The Customer 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 roofing) that OSC, or employees of OSC, reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then OSC shall be entitled to delay installation of the Goods until OSC is satisfied that it is safe for the installation to proceed.
- 9.6. The Customer acknowledges and accepts that:

- (a) should the Customer use the Goods supplied for areas not covered by the quotation/estimate or within the scope of the area for which the quotation/estimate was priced on, then any additional Goods required shall be at the Customer's expense; and
- (b) that whilst OSC may bring additional Goods onto site to cover breakages, any remaining Goods remain the property of OSC; and

(c) where the Customer fails to sufficient board and batten in place to meet OSC's specifications, then any extra Goods required to complete the Services will be invoiced as a variation as per clause 7.2

## 10. Customer's Responsibilities

- 10.1. Unless otherwise specified, it is the intention of OSC and agreed by the Customer that it is the responsibility of the Customer (and at the Customer's expense) to provide and have erected scaffolding to enable the Services to be undertaken (where in OSC's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 10.2. Furthermore, any costs of erection, moving or dismantling of the scaffolding shall be at the Customer's cost, as shall any extension to the time that the scaffolding is required to be in place due to circumstances that are not attributable to OSC.
- 10.3. The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Services and agrees that OSC shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
- 10.4. The Customer shall supply an area suitable for washing out OSC's equipment and for depositing all unused concrete and slurry.

## 11. Dimensions, Plans and Specifications

- 11.1. All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless OSC and the Customer agree otherwise in writing.
- 11.2. OSC shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 11.3. If the giving of an estimate or quotation for the supply of Goods involves OSC estimating measurements and quantities from architectural drawings, the Customer accepts that:
  - (a) any remaining or left over Goods do not pass to the ownership of the Customer but instead remain the property of OSC who will return it to OSC's premises at no charge or compensation; and
  - (b) where a shortage in quantity required occurs and further Goods are required, these shall be supplied at the Customer's cost and are deemed to be additional Goods.
- 11.4. Where the Customer provides an estimate of the quantity of Goods required, the Customer acknowledges and accepts that:
  - (a) any remaining or left over Goods belong to the Customer with no obligation for OSC to provide a refund or accept the surplus Goods for return; and
  - (b) any further Goods required are at the Customer's expense.

## 12. Access

- 12.1. The Customer shall ensure that OSC has clear and free access to the site at all times to enable them to deliver the Goods and/or undertake the Services. OSC 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 OSC.

## 13. Compliance with Laws

- 13.1. The Customer and OSC 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.
- 13.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 13.3. OSC has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, OSC shall not be the person who controls the place of work in terms of the HSW Act.

## 14. Title

- 14.1. OSC and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid OSC all amounts owing to OSC; and
  - (b) the Customer has met all of its other obligations to OSC.
- 14.2. Receipt by OSC 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 Goods passes to the Customer in accordance with clause 14.1:
  - (a) the Customer is only a bailee of the Goods and must return the Goods to OSC on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for OSC and must pay to OSC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for OSC and must pay or deliver the proceeds to OSC on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of OSC and must sell, dispose of or return the resulting product to OSC as it so directs.
  - (e) the Customer irrevocably authorises OSC to enter any premises where OSC believes the Goods are kept and recover possession of the Goods.
  - (f) OSC may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer 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 OSC.
  - (h) OSC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

15. **Personal Property Securities Act 1999 (“PPSA”)**

15.1. Upon assenting to these terms and conditions in writing the Customer 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 Customer to OSC for Services – that have previously been supplied and that will be supplied in the future by OSC to the Customer.

- 15.2. The Customer 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 OSC may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, OSC 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 OSC; and
  - (d) immediately advise OSC 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.
- 15.3. OSC and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5. Unless otherwise agreed to in writing by OSC, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6. The Customer shall unconditionally ratify any actions taken by OSC under clauses 15.1 to 15.5.

## 16. Security and Charge

- 16.1. In consideration of OSC agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2. The Customer indemnifies OSC from and against all OSC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising OSC's rights under this clause.
- 16.3. The Customer irrevocably appoints OSC and each director of OSC as the Customer'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 Customer's behalf.

## 17. Defects

- 17.1. The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify OSC of any alleged defect, shortage in quantity, damage or failure to comply with the estimate or description or quote. The Customer shall afford OSC an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which OSC has agreed in writing that the Customer is entitled to reject, OSC's liability is limited to either (at OSC's discretion) replacing the Goods or repairing the Goods.
- 17.2. Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) OSC has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (c) OSC will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) 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.
- 17.3. OSC may (in its discretion) accept the return of non-defective Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 17.4. Subject to clause 17.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

## 18. Warranty

- 18.1. Subject to the conditions of warranty set out in clause 18.2 OSC warrants that if any defect in any workmanship of OSC becomes apparent and is reported to OSC within twelve (12) months of the date of delivery (time being of the essence) then OSC will either (at OSC'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 Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by OSC; or
    - (iii) any use of any Goods otherwise than for any application specified on a estimate or quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and OSC shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without OSC's consent.
  - (c) in respect of all claims OSC 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 Goods not manufactured by OSC, the warranty shall be the current warranty provided by the manufacturer of the Goods. OSC 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.
- ## 19. Consumer Guarantees Act 1993
- 19.1. If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by OSC to the Customer.

## 20. Intellectual Property

- 20.1. Where OSC has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents

shall remain the property of OSC. Under no circumstances may such designs, drawings and documents be used without the express written approval of OSC.

- 20.2. The Customer warrants that all designs, specifications or instructions given to OSC will not cause OSC to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify OSC against any action taken by a third party against OSC in respect of any such infringement.



- 20.3. The Customer agrees that OSC may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which OSC has created for the Customer.
- 21. Default and Consequences of Default**
- 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 OSC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2. If the Customer owes OSC any money the Customer shall indemnify OSC from and against all costs and disbursements incurred by OSC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, OSC's collection agency costs, and bank dishonour fees).
- 21.3. Further to any other rights or remedies OSC may have under this contract, if a Customer has made payment to OSC, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by OSC under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 21.4. Without prejudice to OSC's other remedies at law OSC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to OSC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to OSC becomes overdue, or in OSC's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by OSC;
  - (c) the Customer 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 22. Cancellation**
- 22.1. Without prejudice to any other remedies OSC may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions OSC may suspend or terminate the supply of Goods to the Customer. OSC will not be liable to the Customer for any loss or damage the Customer suffers because OSC has exercised its rights under this clause.
- 22.2. OSC 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 Customer. On giving such notice OSC shall repay to the Customer any money paid by the Customer for the Goods. OSC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by OSC as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4. Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 23. Privacy Act 1993**
- 23.1. The Customer authorises OSC or OSC's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by OSC from the Customer directly or obtained by OSC 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 Customer.
- 23.2. Where the Customer is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3. The Customer shall have the right to request OSC for a copy of the information about the Customer retained by OSC and the right to request OSC to correct any incorrect information about the Customer held by OSC.
- 24. Construction Contracts Act 2002**
- 24.1. The Customer hereby expressly acknowledges that:
- (a) OSC 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 Customer, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to OSC by a particular date; and
    - (iv) OSC has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if OSC 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 Customer or by any person claiming through the Customer; 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 OSC exercises the right to suspend work, the exercise of that right does not:

- (i) affect any rights that would otherwise have been available to OSC under the Contract and Commercial Law Act 2017; or
- (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of OSC suspending work under this provision.

25. **Service 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;
  - (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.
- 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. Trusts

- 26.1. If the Customer 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 OSC may have notice of the Trust, the Customer covenants with OSC as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of OSC (OSC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Customer 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.

## 27. General

- 27.1. 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).
- 27.2. 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.
- 27.3. 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 New Zealand.
- 27.4. OSC shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by OSC of these terms and conditions (alternatively OSC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.5. OSC may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 27.6. The Customer cannot licence or assign without the written approval of OSC.
- 27.7. OSC 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 Customer agrees and understands that they have no authority to give any instruction to any of OSC's sub-contractors without the authority of OSC.
- 27.8. The Customer agrees that OSC may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for OSC to provide Goods to the Customer.
- 27.9. 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.
- 27.10. 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.