

North Canterbury Glass & Auto Glass 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 **"NGC"** means North Canterbury Glass & Auto Glass Limited, its successors and assigns.
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting NCG 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 partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **"Services"** means all Services (including consultation, manufacturing and/or installation services) or Goods supplied by NCG to the Customer at the Customer's request from time to time (where the context so permits the terms "Services" or "Goods" shall be interchangeable for the other).
- 1.5 **"Worksite"** means the address (or vehicle) nominated by the Customer to which the Goods are to be supplied by NCG.
- 1.6 **"Intended Use"** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Services.
- 1.7 **"Non-Conforming Product"** means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
- (b) does not, or will not, comply with the relevant regulatory provisions; or
- (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 **"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 Customer does not wish to allow Cookies to operate in the background when using NCG's website, then the Customer 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.
- 1.9 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between NCG and the Customer in accordance with clause 5 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 any Services.
- 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 Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a credit application with NCG and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, NCG reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by NCG in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on NCG's own knowledge and experience and shall be accepted without liability on the part of NCG. Where such advice or recommendations are not acted upon then NCG shall require the Customer or their agent to authorise commencement of the Services in writing. NCG shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 NCG will use reasonable endeavours to match new Goods to existing Goods. However, the parties recognise that it may not be possible to provide an exact match of Goods and in such event there shall be no claim against NCG.
- 2.8 In the event that NCG is required to provide the Services urgently, that may require NCG's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then NCG reserves the right to charge the Customer additional labour costs, unless otherwise agreed between NCG and the Customer.
- 2.9 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, NCG reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior notification and agreement of both parties. NCG also reserves the right to halt all Services until such time as NCG and the Customer agree to such changes. NCG shall not be liable to the Customer for any loss or damage the Customer suffers due to NCG exercising its rights under this clause.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that NCG 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 NCG 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 NCG 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 NCG, 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 NCG 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 NCG as a result of the Customer's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At NCG's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by NCG to the Customer in respect of Services performed or Goods supplied; or
- (b) NCG's quoted Price (subject to clause 5.2) which shall be binding upon NCG provided that the Customer shall accept NCG's quotation in writing within thirty (30) days.
- 5.2 NCG 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, limited access to the site, poor weather conditions, obscured site defects which require remedial work, prerequisite work by any third party not being completed, or change of design, etc.) which are only discovered on commencement of the Services; or
- (d) if during the course of the Services, the Goods cease to be available from NCG's third-party suppliers, then NCG reserves the right to provide alternative Goods; or
- (e) in the event of increases to NCG in the cost of labour or materials which are beyond NCG's control.
- 5.3 Variations will be charged for on the basis of NCG's quotation, and will be detailed in writing, and shown as variations on NCG's invoice. The Customer shall be required to respond to any variation submitted by NCG within ten (10) working days. Failure to do so will entitle NCG 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. At NCG's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by NCG, which may be:
- (a) on completion of the Services;
- (b) by way of progress payments in accordance with NCG'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 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;
- (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 Customer by NCG.
- 5.5 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 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 Subpart 2A - sections 18(a) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be used other than to remedy defects in the performance of NCG's obligations under the Contract.
- 5.6 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 Customer and NCG.
- 5.7 NCG may in its discretion allocate any payment received from the Customer towards any invoice that NCG determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer NCG may re-allocate any payments previously received and allocated. In the absence of any payment allocation by NCG, payment will be deemed to be allocated in such manner as preserves the maximum value of NCG's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 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 NCG nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by NCG is a claim made under the Construction Contracts Act 2002. Nothing in this clause 5.9 prevents the Customer from the ability to dispute any invoice.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to NCG an amount equal to any GST NCG may pay for any supply by NCG under this or any other agreement 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.
- 6. Dimensions, Plans and Specifications**
- 6.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless NCG and the Customer agree otherwise in writing.
- 6.2 NCG shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 6.3 If the giving of an estimate or quotation for the supply of Goods involves NCG estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of NCG's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
- 6.4 Should the Customer require any changes to NCG's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 7. Provision of the Services**
- 7.1 Subject to clause 7.2 it is NCG's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that NCG claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond NCG's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
- (b) have the Worksite ready for the Services; or
- (c) notify NCG that the Worksite is ready.
- 7.3 At NCG's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 NCG may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by NCG for delivery of the Services is an estimate only and NCG 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 Services to be supplied at the time and place as was arranged between both parties. In the event that NCG is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then NCG shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.
- 8. Worksite Access and Condition**
- 8.1 NCG is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by NCG will be placed in a designated area appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
- 8.2 It is the intention of NCG and agreed by the Customer that:
- (a) the Customer shall ensure that NCG has clear and free access to the Worksite at all times to enable them to undertake the Services (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). NCG shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of NCG;
- (b) it is the Customer's responsibility to provide NCG, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 8.3 The Customer agrees to be present at the Worksite when and as reasonably requested by NCG and its employees, contractors and/or agents.
- 8.4 **Worksite Inductions**
- (a) in the event the Customer requires an employee or sub-contractor of NCG to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay NCG's standard (and/or overtime, if applicable) hourly labour rate; or
- (b) where NCG is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out NCG's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Services will be by appointment only and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by NCG.
- 9. Risk**
- 9.1 If NCG retains ownership of the Goods under clause 12, then where NCG is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at NCG's address; or
- (b) the Goods are delivered by NCG or NCG's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- 9.2 Notwithstanding the provisions of clause 9.1 if the Customer specifically requests NCG to leave Goods outside NCG's premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.
- 9.3 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that NCG reasonably forms the opinion that the Customer's premises is not safe for the Services to proceed then NCG shall be entitled to delay the provision of the Services (in accordance with clause 7.2) until NCG is satisfied that it is safe for the installation to proceed.
- 9.4 Holes, cut outs and cutting of the Goods may weaken the strength of the Goods and although it's unlikely, cracking may occur. NCG accepts no responsibility against cracks occurring after such Goods (that are subject to holes and cut outs) are installed unless a toughened glass is used.
- 9.5 NCG shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
- 9.6 The Customer acknowledges that NCG is only responsible for Goods that are replaced/supplied by NCG and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify NCG against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 9.7 The Customer acknowledges that Goods supplied may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.
- 9.8 The Customer further acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.
- 9.9 Whilst NCG will make every effort to match sales samples to the finished Goods, NCG accepts no liability whatsoever where such samples differ to the finished Goods supplied.
- 9.10 It is the Customer's responsibility to:
- (a) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between NCG and the Customer, any additional costs will be invoiced to the Customer in accordance with clause 5.2; and
- (b) fully disclose any information that may affect NCG's installation procedures; and
- (c) provide adequate dustsheets to protect the Customer's furniture and décor. NCG will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any installation procedures; and
- (d) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by NCG in this regard.
- 9.11 NCG is not insured to remove furniture or fittings and will not do so.
- 10. Hidden Services**
- 10.1 Prior to NCG commencing any work the Customer must advise NCG of the precise location of all services on the Worksite and clearly mark the same. The mains and services the Customer 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 Worksite.
- 10.2 Whilst NCG will take all care to avoid damage to any services the Customer agrees to indemnify NCG 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. Compliance with Laws**
- 11.1 The Customer and NCG 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 or any other relevant safety standards or legislation pertaining to the Services.
- 11.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) in respect of all workmanship and building products to be supplied during the course of the Services; and
- (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.3 Where the Customer has supplied products for NCG to complete the Services, the Customer 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 NCG's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then NCG 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 5.2.
- 11.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.5 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), NCG 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 Customer who has engaged a third party head contractor.
- 12. Title**
- 12.1 NCG and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid NCG all amounts owing to NCG; and
- (b) the Customer has met all of its other obligations to NCG.
- 12.2 Receipt by NCG 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to NCG on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for NCG and must pay to NCG the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the production of these terms and conditions by NCG shall be sufficient evidence of NCG's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with NCG to make further enquiries;
- (d) 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

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- Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for NCG and must pay or deliver the proceeds to NCG on demand;
- (e) 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 NCG and must sell, dispose of or return the resulting product to NCG as it so directs;
- (f) unless the Goods have become fixtures the Customer irrevocably authorises NCG to enter any premises where NCG believes the Goods are kept and recover possession of the Goods;
- (g) NCG may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) 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 NCG; and
- (i) NCG may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 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 that have previously been supplied and that will be supplied in the future by NCG to the Customer and the proceeds from such Goods.
- 13.2 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 NCG may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, NCG 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 or the proceeds of such Goods in favour of a third party without the prior written consent of NCG; and
- (d) immediately advise NCG of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 NCG and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by NCG, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by NCG under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of NCG agreeing to supply the Services, 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, and the Customer grants a security interest in all of its present and after-acquired property, 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). 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.
- 14.2 The Customer indemnifies NCG from and against all NCG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NCG's rights under this clause.
- 14.3 The Customer irrevocably appoints NCG and each director of NCG as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects and Returns**
- 15.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify NCG of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford NCG 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 NCG has agreed in writing that the Customer is entitled to reject, NCG's liability is limited to either (at NCG's discretion) replacing the Goods or repairing the Goods.
- 15.2 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
- (b) NCG has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and
- (d) NCG will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) 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.
- 15.3 NCG will not accept the return of Goods for credit.
- 16. Warranties**
- 16.1 Subject to the conditions of warranty set out in clause 16.2 NCG warrants that if any defect in any Goods manufactured or Services provided by NCG becomes apparent and is reported to NCG within twelve (12) months of the date of delivery (time being of the essence) then NCG will either (at NCG's sole discretion) replace or remedy the defect.
- 16.2 The conditions applicable to the warranty given by clause 16.1 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 serviced item; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by NCG; or
- (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
- (iv) 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
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and NCG shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without NCG's consent.
- (c) in respect of all claims NCG 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.
- 16.3 For Goods not manufactured by NCG, the warranty shall be the current warranty provided by the manufacturer of the Goods. NCG 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.
- 17. Consumer Guarantees Act 1993**
- 17.1 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 ("CGA") do not apply to the supply of Goods by NCG to the Customer.
- 18. Intellectual Property**
- 18.1 Where NCG has designed, drawn, written plans or a schedule of Services, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in NCG, and shall only be used by the Customer at NCG's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of NCG.
- 18.2 The Customer warrants that all designs, specifications or instructions given to NCG will not cause NCG to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify NCG against any action taken by a third party against NCG in respect of any such infringement.
- 18.3 The Customer agrees that NCG may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which NCG has created for the Customer.
- 19. Default and Consequences of Default**
- 19.1 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 NCG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes NCG any money the Customer shall indemnify NCG from and against all costs and disbursements incurred by NCG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NCG's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies NCG may have under this Contract, if a Customer has made payment to NCG, 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 NCG under this clause 19, 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.
- 19.4 Without prejudice to NCG's other remedies at law NCG shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to NCG shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NCG becomes overdue, or in NCG'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 NCG;
- (c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Cancellation**
- 20.1 Without prejudice to any other rights or remedies NCG may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice) then NCG may suspend or terminate the supply of the Services. NCG will not be liable to the Customer for any loss or damage the Customer suffers because NCG has exercised its rights under this clause.
- 20.2 NCG may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice NCG shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to NCG for Services already performed. NCG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Customer cancels the delivery of Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by NCG as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products 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.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by NCG is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. NCG acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Acts 1993 and 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. NCG acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by NCG that may result in serious harm to the Customer, NCG will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to NCG in respect of Cookies where the Customer utilises NCG's website to make enquiries. NCG 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 from the Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to NCG when NCG sends an email to the Customer, so NCG may collect and review that information ("collectively Personal Information").
- 21.3 If the Customer consents to NCG's use of Cookies on NCG's website and later wishes to withdraw that consent, the Customer may manage and control NCG's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- The Customer authorises NCG or NCG's agent to:
- (a) access, collect, retain and use any information about the Customer;
- (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 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 NCG from the Customer directly or obtained by NCG 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.
- 21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993 and 2020.
- 21.5 The Customer shall have the right to request (by e-mail from NCG, a copy of the Personal Information about the Customer retained by NCG and the right to request that NCG correct any incorrect Personal Information.
- 21.6 NCG will destroy Personal Information upon the Customer'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.
- 21.7 The Customer can make a privacy complaint by contacting NCG via e-mail. NCG 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 22. Suspension of Services**
- 22.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) NCG 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 in accordance with clause 5.5 and/or any subsequent amendments or new legislation 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 NCG by a particular date; and
- (iv) NCG has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if NCG 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 NCG exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to NCG 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 NCG suspending work under this provision;
- (d) due to any act or omission by the Customer, the Customer effectively precludes NCG from continuing the Services or performing or complying with NCG's obligations under this Contract, then without prejudice to NCG's other rights and remedies, NCG may suspend the Services immediately after serving on the Customer 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 NCG as a result of such suspension and commencement shall be payable by the Customer as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, NCG suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, NCG shall be entitled to terminate the Contract, in accordance with clause 20.
- 23. Service of Notices**
- 23.1 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.
- 23.2 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.
- 24. Trusts**
- 24.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not NCG may have notice of the Trust, the Customer covenants with NCG 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 NCG (NCG 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.
- 25. General**
- 25.1 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 section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 25.2 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.
- 25.3 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 Christchurch Courts, New Zealand.
- 25.4 Subject to the CGA, NCG 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 NCG of these terms and conditions (alternatively NCG's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 25.5 NCG may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.6 The Customer cannot licence or assign without the written approval of NCG.
- 25.7 NCG 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 NCG's sub-contractors without the authority of NCG.
- 25.8 The Customer agrees that NCG may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to 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 NCG to provide Services to the Customer.
- 25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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 Customer to make a payment to NCG.
- 25.10 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.