

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting NEC to provide the Works 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.
- 1.2 **“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.
- 1.3 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using NEC’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.4 **“NEC”** means Eastbridge Services Limited T/A Napier Engineering & Contracting, its successors and assigns.
- 1.5 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between NEC and the Client in accordance with clause 6 below.
- 1.6 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Goods supplied by NEC to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Goods’ shall be interchangeable for the other).
- 1.7 **“Worksite”** means the address nominated by the Client to which the Goods are to be supplied by NEC.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered 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 Works on credit shall not take effect until the Client has completed a credit application with NEC and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, NEC reserves the right to refuse delivery.
- 2.6 In the event that NEC is required to provide the Works urgently, that may require NEC’s staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then NEC reserves the right to charge the Client a minimum **call out fee** based on NEC’s standard hourly labour rate, plus travel, plus Goods, unless otherwise agreed between NEC and the Client.
- 2.7 Any advice, recommendation, information, assistance, or service provided by NEC in relation to Works or Goods supplied is given in good faith to the Client, or the Client’s agent and is based on NEC’s own knowledge and experience and shall be accepted without liability on the part of NEC. Where such advice or recommendations are not acted upon then NEC shall require the Client or their agent to authorise commencement of the Works in writing. NEC shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.8 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. Authorised Representatives

- 3.1 The Client acknowledges that NEC shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to NEC, that person shall have the full authority of the Client to order any Works or Goods and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to NEC for all additional costs incurred by NEC (including NEC’s profit margin) in providing any Works, Goods or variation/s requested thereto by the Client duly authorised representative.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that NEC 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 NEC 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 NEC in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of NEC; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give NEC 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by NEC as a result of the Client’s failure to comply with this clause.

6. Price and Payment

- 6.1 At NEC’s sole discretion, the Price shall be either:
(a) as indicated on invoices provided by NEC to the Client in respect of Works performed or Goods supplied; or
(b) NEC’s quoted Price (subject to clause 6.2) which shall be binding upon NEC provided that the Client shall accept NEC’s quotation in writing within thirty (30) days.

- 6.2 NEC 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 Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations, prerequisite work by any third party not being completed, unforeseen welding and repairs, warping of Goods, scorching during welding, misalignment during cutting, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to NEC in the cost of labour or Goods (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) which are beyond NEC's control.
- 6.3 Variations will be charged for on the basis of NEC's quotation, and will be detailed in writing, and shown as variations on NEC's invoice. The Client shall be required to respond to any variation submitted by NEC within ten (10) working days. Failure to do so will entitle NEC 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 NEC's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by NEC, which may be:
- (a) on completion of the Works; or
 - (b) on or before delivery of the Goods;
 - (c) by way of progress payments in accordance with NEC's specified progress payment schedule;
 - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (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 Client by NEC.
- 6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and NEC.
- 6.7 NEC may in its discretion allocate any payment received from the Client towards any invoice that NEC determines and may do so at the time of receipt or at any time afterwards. On any default by the Client NEC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by NEC, payment will be deemed to be allocated in such manner as preserves the maximum value of NEC's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 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 NEC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to NEC an amount equal to any GST NEC must pay for any supply by NEC 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. Accuracy of Client's Plans and Measurements**
- 7.1 In the event the Client gives information relating to the Works (including plans, specifications, measurements, and quantities of the Goods required to complete the Works, and other information provided by the Client):
- (a) it is the Client's responsibility to verify the accuracy of the measurements and quantities before the Client or NEC places an order based on these measurements and quantities. NEC accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause;
 - (b) NEC shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, NEC accepts no responsibility for any loss, damages, or costs however resulting therefrom.
- 7.2 Where the Client is to supply NEC with any data or design specifications (including, but not limited to, CAD drawings) then the Client shall be responsible for that the same is correct in all aspects. NEC shall not be held liable in any way whatsoever for any errors in the Goods that are caused by incorrect or inaccurate drawings or data supplied by the Client.
- 8. Provision of the Works**
- 8.1 Subject to clause 8.2 it is NEC's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 8.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that NEC claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond NEC's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify NEC that the Worksite is ready.
- 8.3 At NEC's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 8.4 NEC may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.5 Any time specified by NEC for delivery of the Works is an estimate only and NEC will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that NEC is unable to supply the Works as agreed solely due to any action or inaction of the Client, then NEC shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Goods.
- 9. Risk**
- 9.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at NEC's address; or

- (b) NEC (or NEC's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 9.2 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.
- 9.3 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, NEC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by NEC is sufficient evidence of NEC's rights to receive the insurance proceeds without the need for any person dealing with NEC to make further enquiries.
- 9.4 If the Client specifically requests NEC to leave Goods outside NEC'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 Client and it shall be the Client'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 Client's expense.
- 9.5 Where the Client has supplied materials for NEC to modify and/or repair and such materials are not up to workable/forming (commonly known as "spinning") standard, then NEC reserves the right to charge the Client for any additional associated costs to complete the Works and shall invoice the Client in accordance with clause 6.2. NEC shall not be responsible for any defects in the Goods, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 9.6 Detailed drawings of any services that will be embedded in the Goods are to be provided to NEC prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by NEC for damage to the services or any other element embedded in the Goods.
- 9.7 The Client acknowledges that:
- (a) Goods supplied may exhibit variations in shade, colour, texture, surface, and finish. NEC will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
 - (b) NEC is only responsible for parts that are replaced by NEC and does not at any stage accept any liability in respect of previous services and/or components supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify NEC against any loss or damage to the Works, or caused thereby, or any part thereof howsoever arising;
 - (c) where the Contract does not include installation of Goods by NEC, NEC shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 9.8 It is the responsibility of the Client to ensure that the work area and surrounds are protected and free from hazards (including, but not limited to, flammable materials), fume extracted and ventilated. NEC accepts no liability whatsoever in this respect.
- 10. Worksite Access and Condition**
- 10.1 The Client shall ensure that NEC has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). NEC shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of NEC.
- 11. Compliance with Laws**
- 11.1 The Client and NEC shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works or Goods.
- 11.3 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), NEC agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
- 12. Title**
- 12.1 NEC and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid NEC all amounts owing to NEC; and
 - (b) the Client has met all of its other obligations to NEC.
- 12.2 Receipt by NEC 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 Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to NEC on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for NEC and must pay to NEC 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 NEC shall be sufficient evidence of NEC's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with NEC to make further enquiries;
 - (d) 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 NEC and must pay or deliver the proceeds to NEC on demand;
 - (e) 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 NEC and must sell, dispose of or return the resulting product to NEC as it so directs;
 - (f) unless the Goods have become fixtures the Client irrevocably authorises NEC to enter any premises where NEC believes the Goods are kept and recover possession of the Goods;
 - (g) NEC may recover possession of any Goods in transit whether or not delivery has occurred;
 - (h) 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 NEC; and
 - (i) NEC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

13. Personal Property Securities Act 1999 (“PPSA”)

- 13.1 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 that have previously been supplied and that will be supplied in the future by NEC to the Client and the proceeds from such Goods as listed by NEC to the Client in invoices rendered from time to time.
- 13.2 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 NEC may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, NEC 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 NEC; and
 - (d) immediately advise NEC 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 NEC and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client 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 NEC, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by NEC 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 NEC agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 14.2 The Client indemnifies NEC from and against all NEC’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NEC’s rights under this clause.
- 14.3 The Client irrevocably appoints NEC and each director of NEC as the Client’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 Client’s behalf.

15. Defects and Returns

- 15.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify NEC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford NEC 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 NEC has agreed in writing that the Client is entitled to reject, NEC’s liability is limited to either (at NEC’s discretion) replacing the Goods or repairing the Goods.
- 15.2 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) NEC has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client’s cost within fourteen (14) days of the delivery date; and
 - (d) NEC 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 NEC may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.
- 15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Client’s specifications are under no circumstances acceptable for credit or return.

16. Warranties

- 16.1 For Goods not manufactured by NEC, the warranty shall be the current warranty provided by the manufacturer of the Goods. NEC 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.
- 16.2 In the case of second hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by NEC as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. NEC shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

17. Consumer Guarantees Act 1993

- 17.1 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 (“CGA”) do not apply to the supply of Goods by NEC to the Client.

18. Intellectual Property

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

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 NEC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes NEC any money the Client shall indemnify NEC from and against all costs and disbursements incurred by NEC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NEC's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies NEC may have under this Contract, if a Client has made payment to NEC, 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 NEC under this clause 19, 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.
- 19.4 Without prejudice to NEC's other remedies at law NEC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to NEC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NEC becomes overdue, or in NEC's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by NEC;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other rights or remedies NEC may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then NEC may suspend or terminate the supply of the Works. NEC will not be liable to the Client for any loss or damage the Client suffers because NEC has exercised its rights under this clause.
- 20.2 NEC may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice NEC shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to NEC for Works already performed. NEC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by NEC 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 Client'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 NEC is "**Personal Information**" as defined and referred to in clause 21.3 and therefore considered confidential. NEC acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. NEC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by NEC that may result in serious harm to the Client, NEC will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to NEC in respect of Cookies where the Client utilises NEC's website to make enquiries. NEC 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 NEC when NEC sends an email to the Client, so NEC may collect and review that information ("collectively Personal Information")
- If the Client consents to NEC's use of Cookies on NEC's website and later wishes to withdraw that consent, the Client may manage and control NEC's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client authorises NEC or NEC'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 NEC from the Client directly or obtained by NEC 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.

- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from NEC, a copy of the Personal Information about the Client retained by NEC and the right to request that NEC correct any incorrect Personal Information.
- 21.6 NEC will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.7 The Client can make a privacy complaint by contacting NEC via e-mail. NEC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

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 NEC may have notice of the Trust, the Client covenants with NEC 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 NEC (NEC 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 herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 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 courts of Napier, New Zealand.
- 24.4 Subject to the CGA, NEC 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 NEC of these terms and conditions (alternatively NEC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 24.5 NEC 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 NEC.
- 24.7 NEC may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of NEC's sub-contractors without the authority of NEC.
- 24.8 The Client agrees that NEC 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 NEC to provide Works 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to NEC.
- 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.