

## Comfort Air Conditioning Limited Terms and Conditions of Trade

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### 1. Definitions

- 1.1 **“CAC”** means Comfort Air Conditioning Limited its successors and assigns or any person acting on its behalf and with its authority.
- 1.2 **“Client”** means the person/s, including entities, requesting CAC to provide Goods and Services as specified in any proposal, quotation, order, invoice, or other documentation, and any person acting on behalf of the Client shall be deemed to have the Client’s authority, 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 Trust, each trustee shall be bound in their capacity as a trustee, and personally jointly and severally unless they are an independent trustee having no right or interest in the Trust; and
  - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, occupation, electronic contact (email or Facebook details).
- 1.4 **“Contract”** means the Terms, Quote, and Order, as may be varied in writing by the parties mutual agreement.
- 1.5 **“Goods”** means all goods supplied by CAC to the Client and any fee or charge associated with the supply of Goods to the Client, and where the context so permits the terms ‘Goods’ and ‘Services’ shall be interchangeable for the other.
- 1.6 **“Order”** means the Client’s acceptance of the Quote, at which point the Contract is formed.
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between CAC and the Client in accordance with Clause 6 of this agreement.
- 1.8 **“Quote”** means the quote provided by CAC to the Client.
- 1.9 **“Services”** means all services provided to the Client including but not limited to the provision of all sales, consultations, installation and maintenance services, supplies and charges for labour or any fee or charge associated with the supply of services by CAC to the Client, and where the context so permits the terms ‘Services and ‘Goods shall be interchangeable for the other.
- 1.10 **“Terms”** means CAC’s terms and conditions of trade, herein, and such modified terms from time to time that shall have first been notified to the Client that apply at the time of the Order.

### 2. Acceptance of Terms and Conditions

- 2.1 Upon the Client placing an Order with CAC or accepting delivery of any Services (whichever is the earlier), the parties shall be immediately bound by the Contract.
- 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 by giving to the Client notice in writing and use thereafter by the client shall constitute acceptance of such amendments.
- 2.4 Any advice, recommendation, information, assistance or service provided by CAC in relation to Goods or Services supplied is given in good faith, is based on CAC’s own knowledge and experience and shall be accepted without liability on the part of CAC and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 2.5 The Client acknowledges and agrees that:
  - (a) in the event that the Client requests CAC to make an emergency Call-Out for critical equipment that is either after hours or causes CAC to cancel or reschedule other work then CAC reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Goods used to undertake the Services during normal hours (8am-5pm Monday to Friday) and a two (2) hour labour cost plus a per kilometre travelled rate plus any Goods used to undertake the Services after hours unless otherwise agreed between CAC and the Client;
  - (b) in the event that CAC is required to provide the Services urgently, that may require CAC’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then CAC reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between CAC and the client; and
  - (c) 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, CAC reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases CAC will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order and/or Services on hold, as per clause 7.2 until such time as CAC and the Client agree to such changes.
- 2.6 If CAC has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.7 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 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to CAC as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies CAC in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise CAC in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to CAC for all additional costs incurred by CAC (including CAC's profit margin) in providing any Services, Goods or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

### **4. Errors and Omissions**

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

### **5. Change of Ownership**

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

### **6. Price and Payment**

- 6.1 At CAC's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by CAC to the Client in respect of Services performed or Goods supplied; or
  - (b) CAC's quoted Price (subject to clause 6.2) which shall be binding upon CAC provided that the Client shall accept CAC's quotation in writing within twenty-one (21) days.
- 6.2 CAC 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) if during the course of the Services, the Goods are not or cease to be available from CAC's third-party suppliers, then CAC reserves the right to provide alternative Goods; or
  - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the site, obscured building defects, incorrect measurements provided by the Client, safety considerations (discovery of asbestos or sulphur, etc.), insect damage, prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code or non-compliance of existing wiring, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services; or
  - (e) in the event of increases to CAC in the cost of labour or Goods which are beyond CAC's control.
- 6.3 Variations will be charged for on the basis of CAC's quotation, and will be detailed in writing, and shown as variations on CAC's invoice. The Client shall be required to respond to any variation submitted by CAC within ten (10) working days. Failure to do so will entitle CAC 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 CAC's sole discretion a deposit may be required.
- 6.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by CAC, which may be:
  - (a) on completion of the Services; or
  - (b) by way of progress payments. Such progress payment claims may include the Services, any Goods purchased but not yet installed, and the reasonable value of authorised variations;
  - (c) for certain approved Client's, due twenty (20) days following the end of the month;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by CAC.
- 6.6 No allowance has been made in the Price for the deduction of retentions unless otherwise agreed in writing. In the event that retentions are made, the retentions must be held in a trust account and proof supplied to CAC upon request. CAC reserves the right to treat all retentions as placing the Client's account into default.

## 6. Price and Payment (cont'd)

- 6.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and CAC.
- 6.8 CAC may in its discretion allocate any payment received from the Client towards any invoice that CAC determines and may do so at the time of receipt or at any time afterwards. On any default by the Client, CAC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CAC, payment will be deemed to be allocated in such manner as preserves the maximum value of CAC's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CAC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to CAC an amount equal to any GST CAC must pay for any supply by CAC 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. Provision of the Services

- 7.1 Subject to clause 7.2 it is CAC'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 CAC claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond CAC's control, including but not limited to any failure by the Client to:
  - (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify CAC that the site is ready.
- 7.3 CAC 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.
- 7.4 Any time specified by CAC for delivery of the Services is an estimate only and CAC 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 Services to be supplied at the time and place as was arranged between both parties. In the event that CAC is unable to supply the Services as agreed solely due to any action or inaction of the Client, then CAC 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. Risk

- 8.1 If CAC retains ownership of the Goods under clause 14 then:
  - (a) where CAC is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client 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 the Goods are delivered by CAC or CAC's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where CAC is to both supply and install Goods then CAC shall maintain a contract Services insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests CAC to leave Goods outside CAC's premises for collection or to deliver the Goods to an unattended location then such Goods 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.
- 8.3 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) CAC reasonably forms the opinion that the Client's property is not safe for the installation of Goods to proceed then CAC shall be entitled to delay installation of the Goods (in accordance with clause 7.2) until CAC is satisfied that it is safe for the installation to proceed. CAC may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Services undertaken, and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.4 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify CAC against any costs incurred by CAC as a consequence of such discovery. Under no circumstances will CAC handle removal of asbestos product.
- 8.5 Where CAC gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the site for the Services and such advice or recommendations are not acted upon then CAC shall require the Client or their agent to authorise commencement of the Services in writing. CAC shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 8.6 CAC shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, CAC accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, or other information.

## 8. Risk (cont'd)

- 8.7 CAC shall upon installation ensure that all Goods are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Goods to be installed in any way which goes against CAC's recommendations and/or falls below industry standards, a request detailing that requirement must be made in writing to CAC. Accordingly, CAC offers no warranty in regards to the aforementioned.
- 8.8 The Client acknowledges and accepts that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in CAC's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by CAC;
  - (b) while CAC may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that CAC has given these in good faith, and are estimates based on industry prescribed estimates;
  - (c) it is the Client's responsibility to ensure that all goods, plant or equipment which CAC is required to install (or to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant New Zealand standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which CAC based the quotation on and therefore, the Client agrees to indemnify CAC against any costs incurred by CAC in rectifying such errors if required;
  - (d) where the Client has supplied Goods for CAC to complete the Services, or existing Goods are in place, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the Goods. CAC shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of Goods supplied by the Client;
  - (e) CAC is only responsible for parts that are replaced by CAC and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify CAC against any loss or damage to the Goods;
  - (f) the Goods may fade or change colour over time, expand, contract or distort as a result of exposure, heat, and cold temperatures, mark or stain if exposed to certain substances and be damaged or disfigured by impact or scratching;
  - (g) CAC shall not be responsible or liable for any defect in other appliances or power points as a coincidence of CAC installing the Goods,
  - (h) any defects in the Goods or appearing in the Services after completion due to the Client or any third party using any items that overloads the structure or system to which CAC's Goods are installed or connected to, or by workmanship not performed by CAC, shall not be covered by any applicable warranty pertaining to the Goods;
  - (i) CAC shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of CAC (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which CAC may have to break into or disturb in performance of the Services), unless due to the negligence of CAC.
- 8.9 The Client further acknowledges and agrees that where CAC has performed temporary repairs that:
- (a) CAC offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) CAC will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.
- 8.10 In the event that the Services is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify CAC immediately upon any proposed changes. The Client agrees to indemnify CAC against any additional costs incurred with such a relocation. All such variances shall be invoiced in accordance with clause 6.2. It is the intention of CAC, and agreed by the Client, that it is the responsibility of the Client to provide CAC with facilities, as specified by CAC, (including, but not limited to, a suitable free power source) for the duration of the Services.
- 8.11 Where CAC requires that Goods, tools etc. required for the Services be stored at the site, the Client shall supply CAC a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

## 9. Air-Conditioning Risk

- 9.1 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 9.2 The final location of the wall, window or floor unit must be determined on site by the Client.
- 9.3 The Client acknowledges and agrees that CAC does not guarantee any noise levels (external or internal) and CAC shall not be held liable for any loss, damages, or costs, however resulting from noise levels.
- 9.4 Where installations are in a corrosive environment (eg. sea air, industrial or geothermal sulphur contaminating environment), it is recommended the Goods should be treated with additional corrosion protection prior to installation. CAC shall not be held liable for any loss or damages resulting from corrosion.
- 9.5 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.

## 10. Access

- 10.1 The Client shall ensure that CAC has clear and free access to the site at all times to enable them to undertake the Services. CAC 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 CAC.



## 11. Underground Locations

- 11.1 Prior to CAC commencing any work the Client must advise CAC of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 11.2 Whilst CAC will take all care to avoid damage to any underground services the Client agrees to indemnify CAC 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 12.1.

## 12. Compliance with Laws

- 12.1 The Client and CAC 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 but not limited to, any WorkSafe guidelines or any other relevant safety standards or legislation pertaining to the Services.
- 12.2 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Services.
- 12.3 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") CAC agrees at all times to comply with sections 29 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 site or if in the event that they may be acting as a subcontractor for the Client's where the Client has engaged a thirty party head contractor.

## 13. Title

- 13.1 CAC and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid CAC all amounts owing to CAC; and
  - the Client has met all of its other obligations to CAC.
- 13.2 Receipt by CAC 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.
- 13.3 It is further agreed that:
- until ownership of the Goods passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to CAC on request;
  - the Client holds the benefit of the Client's insurance of the Goods on trust for CAC and must pay to CAC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - the production of these terms and conditions by CAC shall be sufficient evidence of CAC's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with CAC to make further enquiries;
  - 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 CAC and must pay or deliver the proceeds to CAC on demand;
  - 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 CAC and must sell, dispose of or return the resulting product to CAC as it so directs;
  - unless the Goods have become fixtures the Client irrevocably authorises CAC to enter any premises where CAC believes the Goods are kept and recover possession of the Goods;
  - CAC may recover possession of any Goods in transit whether or not delivery has occurred;
  - 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 CAC;
  - CAC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 14.1 The Client acknowledges that these Terms create a security interest in the Goods and any proceeds of the sale of the Goods, as security for all of the Client's obligations to CAC pursuant to the PPSA, and that CAC may register a financing statement to perfect its security interest.
- 14.2 The Client undertakes to do all things necessary to enable CAC to have a first ranking security interest under the PPSA in the Goods and proceeds of sale thereof, including but not limited to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CAC may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - indemnify, and upon demand reimburse, CAC 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;
  - 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 CAC; and
  - immediately advise CAC 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.
- 14.3 The Client waives its rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133, and 134 of the PPSA.

#### **14. Personal Property Securities Act 1999 (“PPSA”) (Cont’d)**

- 14.4 The Client waives its right to receive a verification statement in respect of any financing statement or financing change statement registered by CAC or on its behalf under the PPSA.
- 14.5 The Client shall unconditionally ratify any actions taken by CAC under clauses 14.1 to 14.5.
- 14.6 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### **15. Security and Charge**

- 15.1 In consideration of CAC agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies CAC from and against all CAC’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CAC’s rights under this clause.
- 15.3 The Client irrevocably appoints CAC and each director of CAC as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client’s behalf.

#### **16. Defects and Returns**

- 16.1 The Client shall inspect the Goods on delivery and shall within ten (10) days of delivery (time being of the essence) notify CAC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford CAC 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 CAC has agreed in writing that the Client is entitled to reject, CAC’s liability is limited to either (at CAC’s discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above.

#### **17. Warranties**

- 17.1 For Goods not manufactured by CAC, the warranty shall be the current warranty provided by the manufacturer of the Goods. CAC shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

#### **18. Consumer Guarantees Act 1993**

- 18.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by CAC to the Client.

#### **19. Intellectual Property**

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

#### **20. Default and Consequences of Default**

- 20.1 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 CAC’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes CAC any money the Client shall indemnify CAC from and against all costs and disbursements incurred by CAC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CAC’s collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies CAC may have under this Contract, if a Client has made payment to CAC, 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 CAC under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client’s obligations under this Contract.
- 20.4 Without prejudice to CAC’s other remedies at law CAC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CAC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CAC becomes overdue, or in CAC’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 CAC;
  - (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

## 20. Default and Consequences of Default (cont'd)

- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 21. Suspension of Services

21.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:

- (a) CAC has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
  - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
  - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to CAC by a particular date; and
  - (iv) CAC has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if CAC suspends work, it:
  - (i) is not in breach of Contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
  - (iii) is entitled to an extension of time to complete the Contract; and
  - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if CAC exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to CAC under the Contract and Commercial Law Act 2017; or
  - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of CAC suspending work under this provision.
- (d) due to any act or omission by the Client, the Client effectively precludes CAC from continuing the Services or performing or complying with CAC's obligations under this Contract, then without prejudice to CAC's other rights and remedies, CAC may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by CAC as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

21.2 If pursuant to any right conferred by this Contract, CAC suspends the Services and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, CAC shall be entitled to terminate the Contract, in accordance with clause 22.

## 22. Cancellation

22.1 Without prejudice to any other rights or remedies CAC 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 CAC may suspend the Services immediately. CAC will not be liable to the Client for any loss or damage the Client suffers because CAC has exercised its rights under this clause.

22.2 CAC 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 Client. On giving such notice CAC shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to CAC for Services already performed. CAC shall not be liable for any loss or damage whatsoever arising from such cancellation.

22.3 In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by CAC as a direct result of the cancellation (including, but not limited to, any loss of profits).

22.4 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.

## 23. Privacy Policy

23.1 CAC acknowledges its obligation in relation to the handling, use, disclosure and processing of personal information under the Privacy Act 2020 ("the Act"). In the event CAC becomes aware of any data breaches and/or disclosure of the Client's personal information, held by CAC that in CAC's view may result in serious harm to the Client, CAC will notify the Client in accordance with the Act.

23.2 For the purposes of the Act, the Client authorises CAC to:

- (a) collect, retain and use information about the Client from any person, as CAC may reasonably require for the purpose of assessing the Client's creditworthiness;
- (b) disclose information about the Client to such persons:
  - (i) as is required in the ordinary course of CAC completing the Services; and
  - (ii) as may be necessary or desirable by CAC to enable it to exercise any power or enforce or attempt to enforce any of its rights, remedies and powers under the Terms.

### **23. Privacy Policy (Cont'd)**

- 23.3 The Client shall have the right to request CAC for a copy of the personal information about the Client retained by CAC and the right to request CAC to correct such personal information. CAC is to make such corrections, or otherwise notify the Client in accordance with section 63 of the Act of the reasons CAC refuses to make the corrections.
- 23.4 Where the Client is in business, the Client authorises CAC to use the Goods and Services as part of CAC's client portfolio for CAC's marketing and other promotional purposes. The Client may withdraw this authority at any time by notice in writing to CAC.

### **24. Service of Notices**

- 24.1 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 email to the other party's last known email address.
- 24.2 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.

### **25. Trusts**

- 25.1 If the Client 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 CAC may have notice of the Trust, the Client covenants with CAC 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 CAC (CAC 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.

### **26. General**

- 26.1 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).
- 26.2 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.
- 26.3 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.
- 26.4 CAC 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 CAC of these terms and conditions (alternatively CAC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 26.5 CAC may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of CAC.
- 26.7 CAC may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of CAC's sub-contractors without the authority of CAC.
- 26.8 The Client agrees that CAC 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 CAC to provide Services to the Client.
- 26.9 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.
- 26.10 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. Please note that a larger print version of these terms and conditions is available from CAC on request.