

1. **Definitions**
 - 1.1 "Contract" means the terms and conditions contained herein, together with any Price, order, invoice or other document or amendments thereto to be implemented to this Contract.
 - 1.2 "ESL" means Edgsmith Limited (or otherwise referred to as the "Vendor"), its successors and assigns or any person acting on behalf of and with the authority of Edgsmith Limited.
 - 1.3 "Customer" means the person's, entities or any person acting on behalf of and with the authority of the Customer requesting ESL to provide the Goods as specified in any proposal, price, 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 "Goods" means all Goods, or Services, supplied by ESL to the Customer supplied by ESL to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
 - 1.5 "Cookies" means small files which are stored on a user's electronic device. They are designed to hold a modest amount of data (including PII) specific to a particular Customer and website and can be accessed either by the web server or the Customer's electronic device. If the Customer does not wish to allow Cookies to operate in the background when ordering from the 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 ordering Goods via the website.
 - 1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between ESL and the Customer in accordance with clause 6 below.
 2. **Acceptance**
 - 2.1 The Customer is taken to have exclusively accepted and is irrevocably bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Goods.
 - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the Customer has entered into in relation to 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 Goods on credit shall not take effect until the Customer has completed a Customer Information Form with ESL, and it has been approved with a credit limit established for the account, if required.
 - 2.5 In the event that the supply of Goods exceeds the Customer's credit limit and/or the account exceeds the payment terms, ESL reserves the right to refuse acceptance for new orders or refuse delivery of the Services.
 - 2.6 In the event that the Goods provided by ESL are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by ESL and shall ensure payment is made by the date irrespective of whether the insurance claim is successful.
 - 2.7 Where ESL gives any advice, recommendation, information, assistance or service provided by ESL in relation to Goods supplied is given in good faith and is based on ESL's own knowledge and experience and shall not be accepted without liability on the part of ESL.
 - 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 26 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 - 2.9 In the event that ESL is required to provide the Goods urgently, that may result in ESL to work outside normal business hours (including, but not limited to, working through lunch hours, weekends and/or public holidays) or incur travel or accommodation costs, then ESL reserves the right to charge the Customer the additional costs unless otherwise agreed between ESL and the Customer.
 3. **Errors and Omissions**
 - 3.1 The Customer acknowledges and accepts that ESL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) or omission(s):
 - (a) resulting from an inadvertent mistake made by ESL 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 ESL in respect of the Goods.
 - 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 will misconduct of ESL; the Customer shall not be entitled to treat this Contract as repudiated nor render it void.
 - 3.3 Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice shall be subject to correction.
 4. **Authorised Representatives**
 - 4.1 The Customer acknowledges that ESL shall (for the duration of the Goods) liaise directly with one (1) authorised representative, and that once introduced as such representative, that person shall have the full authority of the Customer to order any Goods, and/or to request any variation thereto on the Customer's behalf. The Customer shall be solely liable to ESL for all additional costs incurred by ESL (including ESL's profit margin) in providing any Goods, or variations requested thereby to the Customer's duty authorised representative.
 - 4.2 If the Customer's duly authorised representative as per clause 4.1, is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise ESL in writing of the parameters of the limited authority granted to their representative.
 - 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to ESL for all additional costs incurred by ESL (including ESL's profit margin) in providing any Goods, or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 of any).
 5. **Change in Control**
 - 5.1 The Customer shall give ESL, 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 details, change of directors, change of trustees, or business practices). The Customer shall be liable for any loss incurred by ESL, as a result of the Customer's failure to comply with this clause.
 6. **Price and Payment**
 - 6.1 At ESL's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by ESL to the Customer in respect of Goods performed or Goods supplied; or
 - (b) ESL's quoted Price (subject to clause 6.2) which shall be binding upon ESL provided that the Customer shall accept ESL's Price in writing within thirty (30) days.
 - 6.2 ESL 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 Goods originally scheduled is requested; or
 - (c) in the event of increases to ESL in the cost of labour or materials which are beyond GLC's control (including but not limited to any variation as a result of fluctuations in currency exchange rates or increases to ESL in the cost of taxes, levies, freight or insurance charges, or delays in shipment, wholesale supply or otherwise) and where the increase is beyond ESL's control.
 - 6.3 Variations will be charged for on the basis of ESL's Price, and will be detailed in writing, and shown as variations on ESL's invoice. The Customer shall be required to respond to any variation submitted by ESL within ten (10) working days. Failure to respond to any variation to the Price, less any amounts owing by the Customer, Payment for all variations must be made in full at the time of their completion.
 - 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date's determined by ESL, which may be:
 - (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) for certain approved Customers, the twenty (20) days following the end of the month in which an invoice is sent to the Customer's address as specified on invoices; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by ESL; or
 - (d) immediately payable at the time the Customer places an order for any non-stock list item or bespoke Goods that ESL has agreed to supply to the Customer.
 - 6.5 Payment may be made by electronic-invoice banking, cash EFTPOS, credit card (a non-charge card transaction may apply) or by any other method as agreed to between the Customer and ESL.
 - 6.6 ESL may, in its discretion allocate any payment received from the Customer towards any invoice that ESL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer, ESL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by ESL, payment will be deemed to be allocated in such manner as preserves the maximum value of the Customer's Purchase Money.
 - 6.7 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 ESL, nor to withhold payment of any invoice because of that invoice is in dispute.
 - 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to ESL an amount equal to any GST ESL must pay for any supply by ESL 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.
 7. **Delivery of the Goods**
 - 7.1 At ESL's sole discretion, delivery of the Goods shall take place when the Goods are supplied to the Customer at the Customer's nominated address, even if the Customer is not present at the address.
 - 7.2 At ESL's sole discretion the cost of delivery is in addition to the quoted price.
 - 7.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.
 - 7.4 Delivery of the Goods 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 ESL for delivery of the Goods is an estimate only and ESL will not be liable for any loss or damage incurred by the Customer as a result of delivery being delayed for any reason. However, both parties agree that they shall make every endeavour to ensure the Goods are delivered at the time and place as was arranged between both parties. In the event that ESL is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then ESL shall be entitled to charge a reasonable fee for re-supplying the Goods at a later time and date, and/or for storage of the Goods.
 8. **Dimensions, Plans and Specifications**
 - 8.1 ESL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any such information provided by the Customer is inaccurate, ESL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
 - 8.2 Where the Customer is to supply ESL with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. ESL shall not be able to take whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.
 - 8.3 In the event the Customer gives information relating to measurements and quantities of Goods required in completing the Goods, it is the Customer's responsibility to verify the accuracy of the measurements and quantities before the Customer places an order based on these measurements and quantities. ESL accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.
 9. **Access**
 - 9.1 The Customer shall ensure that ESL has clear and free access to the delivery address at all times to enable them to undertake the Goods. ESL shall not be liable for any loss or damage to the delivery address (including, without limitation, to driveways, paths, trees, plants, trees, shrubs, driveways and concreted or paved or grassed areas) unless due to the negligence of ESL.
 - 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by ESL. The Customer agrees to indemnify ESL against all costs incurred by ESL in recovering such vehicles in the event they become bogged or otherwise immovable.
 10. **Risk**
 - 10.1 If ESL retains ownership of the Goods under clause 13 then where ESL is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods or arrange for delivery. Delivery of any Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by ESL or ESL's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - 10.2 Notwithstanding the provisions of clause 10.1, if the Customer specifically requests ESL to leave Goods outside ESL's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at the sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately for the full value of the Goods at all times. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.
 - 10.3 Extreme instances of weather, temperature or forecast weather, may cause delay to ESL being able to deliver the Goods. ESL accepts no losses, damages or costs as a result of this instance.
 - 10.4 The Customer acknowledges that Goods supplied may exhibit variations in texture, shade, tone, colour, or finish and delivery. Delivery of any Goods shall be deemed to have taken every effort to match batches of product supplied to minimise such variations. ESL will not be held liable in any way whatsoever, should such variations occur.
 - 10.5 The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in ESL's or the manufacturers fact sheets, price lists or advertising material are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use does not constitute a sale by description and does not form part of the contract, unless expressly stated as such in writing by ESL.
 - 10.6 Where ESL has effected delivery, all risk passes to the Customer as per clause 10.1 and the Customer claims the Goods have been stolen, it shall be the Customer's responsibility to contact the police, and shall not excuse the Customer from fulfilling their financial obligations under this Contract.
 11. **On-line Ordering**
 - 11.1 The Customer acknowledges and agrees that:
 - (a) ESL does not guarantee the website's performance; and
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by ESL; and
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or updates; and
 - (d) there are inherent hazards in electronic distribution, and as such ESL cannot warrant against delays or errors in transmitting data between the Customer and ESL including orders, and you agree that to the maximum extent permitted by law, ESL will not be liable for any losses which the Customer suffers as a result of online ordering not being available or for delays or errors in transmitting orders; and
 - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
 - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, ESL shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
 - 11.2 ESL reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of ESL's business, or violated these terms and conditions.
 12. **Compliance With Laws**
 - 12.1 The Customer and ESL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods including any relating to workplace health and safety laws and any other relevant safety standards or legislation pertaining to the Goods.
 - 12.2 The Customer shall obtain (at the expense of the Customer) any building consent and resource consent and any other licenses and approvals that may be required for the Goods. ESL will require confirmation that all consents and approvals have been obtained by the Customer prior to the commencement of the Services. In the event that any such consents are only obtained following commencement of the Goods, any additional cost incurred due to any changes to the original plans and specifications provided by the Customer shall be charged as a variation, in accordance with clause 6.2.
 - 12.3 Notwithstanding sections 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") ESL 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 named ESL.
 13. **Title**
 - 13.1 ESL and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid ESL all amounts owing to ESL; and
 - (b) the Customer has met all of its other obligations to ESL.
 - 13.2 Receipt by ESL 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:
 - (a) title ownership of the Goods passes to the Customer in accordance with clause 13.1 that the Customer shall be a bailee of the Goods and unless the Goods have become fixtures must return the Goods to ESL on request; and
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for ESL and must pay to ESL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
 - (c) the production of these terms and conditions by ESL shall be sufficient evidence of ESL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with ESL to further enquire; and
 - (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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for ESL and must pay to ESL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
 - (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 ESL and must sell, dispose of or return the resulting product to ESL as it so directs; and
 - (f) unless the Goods have become fixtures the Customer irrevocably authorises ESL to enter any premises where ESL believes the Goods are kept and recover possession of the Goods; and
 - (g) ESL may recover possession of any Goods in transit whether or not delivery has occurred; and
 - (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 ESL; and
 - (i) ESL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has passed to the Customer.
 14. **Personal Property Securities Act 1989 ("PPSA")**
 - 14.1 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 present or after acquired Goods and/or collateral (including – being a monetary obligation of the Customer to ESL, for Goods that have previously been supplied and that will be supplied) in relation to the full value of the Goods to the Customer.
 - 14.2 The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:
 - (a) for all Goods previously supplied by the Vendor to the Customer (if any); and
 - (b) for all of its present and after acquired Goods; and
 - (c) for intellectual property arising out of or in connection with the Services.
 - 14.3 The Customer agrees to pay to the Vendor the Purchase Money. Security interest in the Vendor in respect to all amounts owed by the Customer to the Vendor, as that term is defined in the PPSA.
 - 14.4 Where Goods in respect of which title has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.
 - (a) Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale; and
 - (b) Where any payments are made from the Customer's bank account otherwise than to ESL, payment shall be deemed to have been made from all other funds in the Customer's bank account and not from and held on trust for the Vendor; and
 - (c) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Customer.
 - 14.5 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 ESL may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register; and
 - (b) indemnify, and upon demand reimburse, ESL for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby; and
 - (c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of ESL; and
 - (d) immediately advise ESL 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.
 - 14.6 ESL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 14.7 If any of the Goods are incorporated in or used as material for other goods before payment is made, then the title of the Goods and other goods shall be deemed to remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.
 - 14.8 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
 - 14.9 Unless otherwise agreed to in writing by ESL, the Customer waives its right to receive a verification statement in accordance with section 149 of the PPSA.
 - 14.10 The Customer shall unconditionally ratify any actions taken by ESL under clauses 14.1 to 14.9.
 15. **Security and Charge**
 - 15.1 In consideration of ESL agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions of this Contract.
 - 15.2 The Customer indemnifies ESL, from and against all ESL's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising ESL's rights under this clause.
 - 15.3 The Customer irrevocably appoints ESL, and each director of ESL as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any documents on the Customer's behalf.
 16. **Defects**
 - 16.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify ESL of any alleged defect, shortage in quantity, damage or failure to comply with the terms and conditions of this Contract. This does not limit the number of times that a defect or damage potentially caused by freight movement, which must be notified to ESL, within forty-eight (48) hours of delivery. The Customer shall offer ESL an opportunity to inspect the Goods within a reasonable time following delivery if the Customer is not satisfied with the inspection. 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 ESL has agreed in writing that the Customer is entitled to reject, ESL's liability is limited to either (at ESL's discretion) replacing the Goods or repaying the Customer.
 - 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
 - (a) ESL have agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned to the Customer's cost within twenty-one (21) days of the delivery date; and
 - (c) ESL will not be liable for Goods which have not been stored or used in a proper manner.
 17. **Returns**
 - 17.1 ESL has no obligation to accept the return of Goods for credit and specifically manufactured Goods will absolutely not be returned for credit whatsoever unless meeting criteria contained in clause 16.1.
 - 17.2 ESL, may (at its sole discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the returned Goods plus any freight charges.
 18. **Warranties**
 - 18.1 For Goods not manufactured by ESL, the warranty shall be the current warranty provided by the manufacturer of the Goods. ESL is not bound by or not responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
 19. **Consumer Guarantees Act 1993**
 - 19.1 The Customer agrees that if they are acquiring Goods for the purposes of a business (as that term is defined in the CGA), to the extent permitted by law the provisions of the CGA will not apply to the supply of Goods by ESL to the Customer.
 20. **Intellectual Property**
 - 20.1 Where ESL has designed, drawn, written plans or a schedule of Goods, or created any products for the Customer, then the copyright in all such works, drawings, documents, plans, schedules and products shall remain vested in ESL, and shall only be used by the Customer at ESL's discretion. Under no circumstances may the Customer copy, reproduce, disseminate, or make an assignment for the benefit of its creditors, or otherwise use the Customer's intellectual property without the express written approval of ESL.
 - 20.2 The Customer warrants that all designs, specifications or instructions given by ESL, will not cause ESL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify ESL against any action taken by a third party against ESL in respect of any such infringement.
 - 20.3 The Customer agrees that ESL, may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which ESL has created for the Customer.
 21. **Overdue Payments**
 - 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ESL's sole discretion such interest shall compound monthly at such rate) after as well as before any judgment.
 - 21.2 If the Customer overpays or makes a payment to ESL, the Customer shall be deemed to have agreed all costs and disbursements incurred by ESL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, ESL's collection agency costs, and bank dishonour fees).
 - 21.3 Further to any other rights or remedies ESL may have under this Contract, if a Customer has made payment to ESL, 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 ESL under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
 - 21.4 Without prejudice to ESL's other remedies at law ESL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ESL shall, whether or not due for payment, be immediately payable if:
 - (a) any money payable to ESL becomes overdue, or in ESL's opinion the Customer will be unable to make a payment when it falls due; or
 - (b) the Customer has exceeded any applicable credit limit provided by ESL; or
 - (c) the Customer becomes insolvent or bankrupt, commences a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors, or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
 22. **Cancellation**
 - 22.1 Without prejudice to any other rights or remedies ESL 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 notices) then ESL may suspend the Goods (including the General Data Protection Regulation ("GDPR") (collectively "EU Data Protection Laws")) ESL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers PII, held by ESL that may result in serious harm to the Customer, ESL will notify the Customer in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
 - 22.2 Notwithstanding clause 23.1, privacy limitations will extend to ESL in respect of Cookies where transactions for the Goods are processed directly from ESL's website. ESL 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 the Customers Personal Information such as:
 - (a) IP address, browser, email, Customer type and other similar details; and
 - (b) tracking website usage and analytics; and
 - (c) reports which are available to ESL when ESL sends an email to the Customer, so ESL may collect and review that information (collectively "PII")
 - 22.3 If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Customer may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
 23. **Privacy Policy**
 - 23.1 All emails, documents, images or other recorded information including Personally Identifiable Information (PII) as defined and referred to in clause 23.4 held or used by ESL is considered confidential. ESL acknowledges that the Customer's PII may be processed for the purposes of PII pursuant to the Privacy Act 2020 (the "Act") including Part I of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory regulations which relate in a European Economic Area "EEA" then the EU Data Protection Laws (including the General Data Protection Regulation ("GDPR") (collectively "EU Data Protection Laws")) ESL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers PII, held by ESL that may result in serious harm to the Customer, ESL will notify the Customer in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
 - 23.2 Notwithstanding clause 23.1, privacy limitations will extend to ESL in respect of Cookies where transactions for the Goods are processed directly from ESL's website. ESL 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 the Customers Personal Information such as:
 - (a) IP address, browser, email, Customer type and other similar details; and
 - (b) tracking website usage and analytics; and
 - (c) reports which are available to ESL when ESL sends an email to the Customer, so ESL may collect and review that information (collectively "PII")
 - 23.3 If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Customer may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
 - 23.4 The Customer authorises ESL or ESL'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 (e.g. email, Facebook, LinkedIn, etc.) and other contact details, and other information (where applicable), 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.
 - 23.5 The Customer discloses information about the Customer, whether collected by ESL, from the Customer directly or obtained by ESL, from any other sources, to any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer to a credit reference agency.
- 23.5 Where the Customer is an individual the authorities under clause 23.4 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.6 The Customer shall have the right to request ESL for a copy of the PII about the Customer retained by ESL and the right to request ESL to correct any incorrect PII about the Customer held by ESL.
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; or
 - (b) by leaving it at the address of the other party as stated in this Contract; or
 - (c) by sending it by registered post to the address of the other party as stated in this Contract; or
 - (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 Customer is shown, at the time when by the ordinary course of post, the notice would have been delivered.
25. **Trusts**
 - 25.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of a trustee (whether or not a trustee) then whether or not ESL may have notice of the Trust, the Customer covenants with ESL to:
 - (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund; and
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Contract and to accept and to accept and to accept 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; and
 - (c) the Customer shall not without consent in writing of ESL (ESL 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; or
 - (ii) any alteration to or variation of the terms of the Trust; or
 - (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 relating to this Contract shall be submitted to, and settled by, either arbitration 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 shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland courts of New Zealand.
 - 26.4 ESL 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 ESL of these terms and conditions (although such liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
 - 26.5 ESL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
 - 26.6 The Customer cannot licence or assign without the written approval of ESL.
 - 26.7 ESL may elect to subcontract out any part of the Goods 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 ESL's sub-contractors without the authority of ESL.
 - 26.8 The Customer agrees that ESL may amend their general terms and conditions for subsequent future contracts with the Customer and is contracted to which 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 ESL to provide Goods to the Customer.
 - 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party (referred as Force-Majeure).
 - 26.10 Neither party shall be liable for any delays or default caused by any act of God, flood, storm, pandemic or any event that would not normally be referenced as Force Majeure which is beyond the reasonable control of either party.
 - 26.11 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.