

Allcor Fabrication Limited – Terms & Conditions of Trade

1. **Definitions**
- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Allcor"** means Allcor Fabrication Limited, its successors and assigns or any person acting on behalf of and with the authority of Allcor Fabrication Limited.
- 1.3 **"Client"** means the persons, entities or any person acting on behalf of and with the authority of the Client requesting Allcor 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.
- 1.4 **"Works"** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Allcor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.5 **"Worksite"** means the address nominated by the Client to which the Materials are to be supplied by Allcor.
- 1.6 **"Intended Use"** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.7 **"Non-Conforming Building Product"** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
 - (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 **"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, 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) and pricing details.
- 1.9 **"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 Allcor'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.**
- 1.10 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between Allcor and the Client in accordance with clause 6 below.
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 Allcor and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, Allcor reserves the right to refuse delivery. Where Allcor gives any advice, recommendation, information, assistance or service provided by Allcor in relation to Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on Allcor's own knowledge and experience and shall be accepted without liability on the part of Allcor. Where such advice or recommendations are not acted upon then Allcor shall require the Client or their agent to authorise commencement of the Works in writing. Allcor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.7 In the event that Allcor has been requested to do additions or alterations to an existing building or structure then the following shall apply:
 - (a) Allcor shall not be liable for any loss or damage suffered by the Client in relation to the Works where such loss or damage results from the state or condition of the Client's existing building or structure and the effect of such state or condition on the Works or the effect of the Works on the existing building or structure which could not reasonably have been foreseen by Allcor during the course of the Works;
 - (b) Allcor will use reasonable endeavours to match new Materials to existing Materials. However, the parties recognise that it may not be possible to provide an exact match of Materials due to availability of Materials and in such event the Materials are not or cease to be available, Allcor reserves the right to provide alternate Materials and there shall be no claim against Allcor. In all such cases Allcor will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Works on hold, in accordance with 7.2 until such time as Allcor and the Client agree to such changes.
 - (c) where as a result of opening up any part of the existing building or structure to carry out the Works, any additional or altered Works is required because of non-standard construction or any substandard timber or other Materials or because of any Material which is required to be replaced or removed to carry out the Works, all costs involved will be charged to the Client and will be treated as a variation.
- 2.8 If Allcor has been requested by the Client to prepare a quotation that involves multiple site visits or third party involvement (including but not limited to engineers, surveyor or local councils), all costs involved will be charged to the Client irrespective of whether or not the Works go ahead.
- 2.9 The Client acknowledges and accepts that where the Client wishes to postpone Works that Allcor must be notified within twenty four (24) hours of the proposed commencement date as agreed to between both parties. Where such notice is received inside this timeframe, Allcor reserves the right to charge a reasonable fee for the delay in the commencement of the Works.
- 2.10 In the event that Allcor is required to provide the Works urgently, that may require Allcor's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then Allcor reserves the right to charge the Client a minimum call out fee based on Allcor's standard hourly labour rate, plus travel, plus Materials, unless otherwise agreed between Allcor and the Client.
- 2.11 Estimates or quotations based on non-consented plans are subject to variation as required work may change once consent has been obtained as per clause 6.2.
- 2.12 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that Allcor 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 Allcor in the formation and/or administration of this Contract; and/or
 - (b) contained in/informed from any literature (hard copy and/or electronic) supplied by Allcor in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Allcor, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Authorised Representatives**
- 4.1 The Client acknowledges that Allcor shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Allcor, that person shall have the full authority of the Client to order any Works, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to Allcor for all additional costs incurred by Allcor (including Allcor's profit margin) in providing any Works, or variation/s requested thereto by the Client's duly authorised representative.
- 3.3 The Client agrees to be present at the Worksite when and as reasonably requested by Allcor and its employees, contractors and/or agents.
- 3.4 **Worksite Inductions**
 - (a) in the event the Client requires an employee or sub-contractor of Allcor to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay Allcor's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where Allcor is in control of the Worksite, the Client and/or the Client's third party contractors must initially carry out Allcor's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by Allcor.
- 3.5 **Dimensions, Plans and Specifications**
 - 9.1 Allcor 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, Allcor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
 - 9.2 All customary building industry tolerances shall apply to the dimensions and measurements of the Works unless Allcor and the Client agree otherwise in writing. Where the Client is to supply Allcor with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. Allcor shall not be liable whatsoever for any errors in the Works that are caused by incorrect or inaccurate data being supplied by the Client.
 - 9.4 In the event the Client gives information relating to measurements and quantities of Materials required in completing the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Allcor places an order based on these measurements and quantities. Allcor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 3.6 **Risk**
 - 10.1 If Allcor retains ownership of the Materials under clause 14 then:
 - (a) where Allcor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at Allcor's address; or
 - (ii) the Materials are delivered by Allcor or Allcor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Allcor is to both supply and install Materials then Allcor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
 - 10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests Allcor to leave Materials outside Allcor's premises for collection or to deliver the Materials 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 Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
 - 10.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that Allcor, or Allcor employees, reasonably form the opinion that the Client's premises is not safe for the Works to proceed then Allcor shall be entitled to delay the provision of the Works (in accordance with clause 7.2) until Allcor is satisfied that it is safe for the installation to proceed.
 - 10.4 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Allcor will make every effort to match sales samples to the finished Materials Allcor accepts no liability whatsoever where such samples differ to the finished Materials supplied.
 - 10.5 Timber is a hygroscopic material subject to expansion and contraction, therefore Allcor will accept no responsibility for gaps that may appear in the timber during prolonged dry periods.
 - 10.6 The Client acknowledges that Materials supplied may:
 - (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
 - 10.7 Where Allcor requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply Allcor 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.
 - 10.8 Allcor shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of Allcor (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which Allcor may have to break into or disturb in performance of the Works), unless due to the negligence of Allcor.
 - 10.9 The Client acknowledges that they shall:
 - (a) provide and have erected scaffolding to enable the Works to be undertaken (where in Allcor's opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed; and
 - (b) remove any furniture or personal items from the vicinity of the Works, and agrees that Allcor shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and
 - (c) provide adequate dustsheets to protect the Client's furniture, décor and floors. Allcor will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Client, until the coatings are dry; and
 - (d) be wholly responsible for animals and/or children on the worksite.
 - 10.10 The Client warrants that no other tradesmen interfere with any Works and/or Materials supplied under this Contract. Allcor shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
 - 10.11 The Client accepts that should any issue arise in relation to the Works and/or Materials in accordance with clause 18, that Allcor be given the first opportunity to remedy the agreed issue prior to the involvement of a third party contractor.
- 3.7 **Asbestos/Hazardous Materials**
 - 11.1 Prior to Allcor commencing any works the Client must advise Allcor of the precise location of all known Asbestos/Hazardous Materials on the worksite and clearly mark the same. Removal from the worksite and the disposal of Asbestos/Hazardous Materials shall at all times be the Client's responsibility unless otherwise agreed in writing.
 - 11.2 In the event that Allcor discovers Asbestos/Hazardous Materials whilst undertaking any works Allcor shall immediately advise the Client of the same and shall be entitled to suspend the works pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (however arising) incurred by Allcor as a result of the discovery of Asbestos/Hazardous Materials and/or any suspension of works in relation thereto.
 - 11.3 Where Allcor agrees to remove any Asbestos/Hazardous Materials on the Client's behalf then the Client shall be liable for all costs incurred by Allcor in the removal and disposal those materials.
- 3.8 **Underground Locations**
 - 12.1 Prior to Allcor commencing any work the Client must advise Allcor of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited

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- to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 12.2 Whist Allcor will take all care to avoid damage to any underground services. The Client agrees to indemnify Allcor 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.
13. **Compliance with Laws**
- 13.1 The Client and Allcor 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.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the Building Amendment Act 2013, in respect of all workmanship and building products to be supplied during the course of the Works; and
- (b) that Works will be provided in accordance with the any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client has supplied products for Allcor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and are for their Intended Use and any faults inherent in those products. However, if an Allcor's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then Allcor shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.5 Allcor shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works.
- 13.6 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), Allcor agrees at all times to comply with sections 23 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.
14. **Title**
- 14.1 Allcor and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Allcor all amounts owing to Allcor; and
- (b) the Client has met all of its other obligations to Allcor.
- 14.2 Receipt by Allcor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Allcor on request;
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Allcor and must pay to Allcor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
- (c) the production of these terms and conditions by Allcor shall be sufficient evidence of Allcor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Allcor to make further enquiries;
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Allcor and must pay or deliver the proceeds to Allcor on demand;
- (e) the Client should not convert or process the Materials 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 Allcor and must sell, dispose of or return the resulting product to Allcor as it so directs;
- (f) unless the Materials have become fixtures the Client irrevocably authorises Allcor to enter any premises where Allcor believes the Materials are kept and recover possession of the Materials;
- (g) Allcor may recover possession of any Materials in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Allcor; and
- (i) Allcor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
15. **Personal Property Securities Act 1999 ("PPSA")**
- 15.1 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 Materials and/or collateral (account) – being a monetary obligation of the Client to Allcor for Works – that have previously been supplied and that will be supplied in the future by Allcor to the Client.
- 15.2 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 Allcor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Allcor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Allcor; and
- (d) immediately advise Allcor of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.3 Allcor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by Allcor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by Allcor under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
16. **Security and Charge**
- 16.1 In consideration of Allcor 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, 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).
- 16.2 The Client indemnifies Allcor from and against all Allcor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Allcor's rights under this clause.
- 16.3 The Client irrevocably appoints Allcor and each director of Allcor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
17. **Defects in Materials**
- 17.1 The Client shall inspect the Materials on delivery and shall within three (3) days of delivery (time being of the essence) notify Allcor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Allcor an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Allcor has agreed in writing that the Client is entitled to reject, Allcor's liability is limited to either (at Allcor's discretion) replacing the Materials or repairing the Materials.
- Materials will not be accepted for return other than in accordance with 17.1 above.
- 17.2 **Warranties**
- Subject to the conditions of warranty set out in clause 18.2 Allcor warrants that if any defect in any workmanship of Allcor becomes apparent and is reported to Allcor within twelve (12) months of the date of delivery (time being of the essence) then Allcor will either (at Allcor's sole discretion) replace or remedy the workmanship. The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Materials; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by Allcor; or
- (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Allcor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Allcor's consent.
- (c) in respect of all claims Allcor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- For Materials not manufactured by Allcor, the warranty shall be the current warranty provided by the manufacturer of the Materials. Allcor 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 Materials.
18. **Consumer Guarantees Act 1993**
- 18.1 If the Client is acquiring Materials 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 Materials by Allcor to the Client.
19. **Intellectual Property**
- 20.1 Where Allcor 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 Allcor, and shall only be used by the Client at Allcor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Allcor.
- 20.2 The Client warrants that all designs, specifications or instructions given to Allcor will not cause Allcor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Allcor against any action taken by a third party against Allcor in respect of any such infringement.
- 20.3 The Client agrees that Allcor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Allcor has created for the Client.
21. **Default and Consequences of Default**
- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Allcor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes Allcor any money the Client shall indemnify Allcor from and against all costs and disbursements incurred by Allcor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Allcor's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies Allcor may have under this Contract, if a Client has made payment to Allcor, 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 Allcor under this clause 21, 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.
- 21.4 Without prejudice to Allcor's other remedies at law Allcor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Allcor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Allcor becomes overdue, or in Allcor'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 Allcor;
- (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.
22. **Cancellation**
- 22.1 Without prejudice to any other rights or remedies Allcor 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 Allcor may suspend or terminate the supply of the Works. Allcor will not be liable to the Client for any loss or damage the Client suffers because Allcor has exercised its rights under this clause.
- 22.2 Allcor 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 Allcor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Allcor for Works already performed. Allcor 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 Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Allcor 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-stock items, will definitely not be accepted once production has commenced, or an order has been placed.
23. **Privacy Policy**
- 23.1 All emails, documents, images or other recorded information held or used by Allcor is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. Allcor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 (the "Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Allcor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Allcor that may result in serious harm to the Client, Allcor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to Allcor in respect of Cookies where the Client utilizes Allcor's website to make enquiries. Allcor 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 Allcor when Allcor sends an email to the Client, so Allcor may collect and review that information ("collectively Personal Information").
- 23.3 If the Client consents to Allcor's use of Cookies on Allcor's website and later wishes to withdraw that consent, the Client may manage and control Allcor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.4 The Client authorises Allcor or Allcor'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 Allcor from the Client directly or obtained by Allcor 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.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request Allcor for a copy of the Personal Information about the Client retained by Allcor and the right to request Allcor to correct any incorrect Personal Information about the Client held by Allcor.
24. **Suspension of Works**
- 24.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) Allcor 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 Allcor by a particular date; and
- (iv) Allcor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if Allcor 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 Allcor exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Allcor 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 Allcor suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes Allcor from continuing the Works or performing or complying with Allcor's obligations under this Contract, then without prejudice to Allcor's other rights and remedies, Allcor may suspend the Works 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 Works is based. All costs and expenses incurred by Allcor as a result of such suspension and commencement shall be payable by the Client as if they were a variation.
- 24.2 If pursuant to any right conferred by this Contract, Allcor suspends the Works and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, Allcor shall be entitled to terminate the Contract, in accordance with clause 22.
25. **Service of Notices**
- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by email to the other party's last known email address.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
26. **Trusts**
- 26.1 If the 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 Allcor may have notice of the Trust, the Client covenants with Allcor 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 Allcor (Allcor 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.
27. **General**
- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Dunedin.
- 27.4 Allcor 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 Allcor of these terms and conditions (alternatively Allcor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 Allcor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.6 The Client cannot licence or assign without the written approval of Allcor.
- 27.7 Allcor 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 Allcor's sub-contractors without the authority of Allcor.
- 27.8 The Client agrees that Allcor 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 Allcor to provide Works to the Client.
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.