
Optum Plumbing & Energy Solutions – Terms & Conditions of Trade

1. Definitions

- 1.1 “Optum” means Optum Limited T/A Optum Plumbing & Energy Solutions, its successors and assigns or any person acting on behalf of and with the authority of Optum Limited T/A Optum Plumbing & Energy Solutions.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by Optum 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).
- 1.4 “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 Optum’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.
- 1.5 “Price” means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between Optum and the Client in accordance with clause 4 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 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Optum.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Any advice, recommendation, information, assistance or service provided by Optum in relation to Materials or Works supplied is given in good faith, is based on Optum own knowledge and experience and shall be accepted without liability on the part of Optum 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 Materials or Works.
- 2.5 In the event that Optum is required to provide the Works urgently, that may require Optum staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Optum reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Optum and the Client.
- 2.6 If Optum 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 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Optum reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 4.2, subject to prior confirmation and agreement of both parties. In all such cases Optum will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order on hold until such time as Optum and the Client agree to such changes.

3. Change in Control

- 3.1 The Client shall give Optum not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Optum as a result of the Client’s failure to comply with this clause.

4. Price and Payment

- 4.1 At Optum’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Optum to the Client in respect of Works performed or Materials supplied; or
 - (b) Optum’s quoted Price (subject to clause 4.2) which shall be binding upon Optum provided that the Client shall accept Optum’s quotation in writing within thirty (30) days.
- 4.2 Optum reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work, health hazards and/or safety considerations (such as the discovery of asbestos or other toxic materials), prerequisite work by any third party not being completed and/or code compliant, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring/cablings, etc.) which are only discovered on commencement of the Works; or
 - (d) if during the course of the Works, the Materials cease to be or are not available from Optum third party suppliers, then Optum reserves the right to provide alternate suitable Materials (or components of the Materials); or
 - (e) in the event of increases to Optum in the cost of labour or materials which are beyond Optum’s control.
- 4.3 Variations will be charged for on the basis of Optum’s quotation, and will be detailed in writing, and shown as variations on Optum’s invoice. The Client shall be required to respond to any variation submitted by Optum within ten (10) working days. Failure to do so will entitle Optum 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.
- 4.4 At Optum’s sole discretion a deposit may be required.
- 4.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Optum, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Optum’s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;

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- (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is delivered to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Optum.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Optum.
- 4.7 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 Optum nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Optum an amount equal to any GST Optum must pay for any supply by Optum under this or any other agreement for the sale of the Materials. 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.

5. Provision of the Works

- 5.1 At Optum's sole discretion, the cost of delivery is in addition to the Price.
- 5.2 Subject to clause 5.3 it is Optum's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.3 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Optum claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Optum'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 Works; or
 - (c) notify Optum that the site is ready.
- 5.4 Optum may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time specified by Optum for delivery of the Works is an estimate only and Optum will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Optum is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Optum shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

6. Access

- 6.1 The Client shall ensure that Optum has clear and free access to the site at all times to enable them to undertake the Works. Optum 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 Optum.

7. Risk

- 7.1 If Optum retains ownership of the Materials under clause 10 then:
- (a) where Optum 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 Optum's address; or
 - (ii) the Materials are delivered by Optum or Optum's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Optum is to both supply and install Materials then Optum 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.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Optum to leave Materials outside Optum'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.
- 7.3 Optum 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, Optum accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.4 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or latent or unfavourable soil conditions such as liquefaction residue or risk) that Optum, or Optum employees, reasonably form the opinion that the Client's premises is not safe for the Works to proceed then Optum shall be entitled to delay the provision of the Works (in accordance with clause 5.3) until Optum is satisfied that it is safe for the installation to proceed.
- 7.5 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Optum is requested to merely clear such blockages, Optum can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Optum will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 7.6 In the event that the Client requests Optum to use drain/pipe unblocking equipment, and Optum does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, Optum may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- 7.7 The Client acknowledges and agrees that where Optum has performed temporary repairs that:

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- (a) Optum offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
(b) Optum will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 7.8 The Client acknowledges that:
- (a) Optum is only responsible for components that are replaced by Optum and does not at any stage accept any liability in respect of previous materials and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
(b) where the Client has supplied materials for Optum to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials; and
(c) Optum shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) and (b) applies.
- 8. Underground Locations & Hidden Services**
- 8.1 Prior to Optum commencing the Works the Client must advise Optum of the precise location of all underground/hidden mains/services on the site and clearly mark the same. The 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.
- 8.2 Whilst Optum will take all care to avoid damage to any services the Client agrees to indemnify Optum 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 8.1.
- 9. Compliance with Laws**
- 9.1 The Client agrees that the site will comply with any WorkSafe guidelines and the Health and Safety at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2 Optum has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, Optum shall not be the person who controls the place of work in terms of the HSW Act.
- 9.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 9.4 Prior to commencement of any Works Optum shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery Optum where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.
- 9.5 The Client acknowledges that in instances where the gas supply is turned off at the meter or bottles by Optum in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Client.
- 9.6 The Client warrants that any existing plumbing, gasfitting and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. Optum reserves the right to halt all Works (in accordance with clause 5.3 above) if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Client not wish to proceed Optum will charge a standard fee for the time spent on worksite based on Optum's quotation.
- 10. Title**
- 10.1 Optum and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Optum all amounts owing to Optum; and
(b) the Client has met all of its other obligations to Optum.
- 10.2 Receipt by Optum 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.
- 10.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Optum on request.
(b) the Client holds the benefit of the Client's insurance of the Materials on trust for Optum and must pay to Optum 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 Optum shall be sufficient evidence of Optum's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Optum 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 Optum and must pay or deliver the proceeds to Optum 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 Optum and must sell, dispose of or return the resulting product to Optum as it so directs.
(f) unless the Materials have become fixtures the Client irrevocably authorises Optum to enter any premises where Optum believes the Materials are kept and recover possession of the Materials.
(g) Optum 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 Optum.
(i) Optum may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 11. Personal Property Securities Act 1999 ("PPSA")**
- 11.1 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

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- (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to Optum for Works – that have previously been supplied and that will be supplied in the future by Optum to the Client.
- 11.2 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 Optum may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Optum 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 Optum; and
 - (d) immediately advise Optum 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.
- 11.3 Optum and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by Optum, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by Optum under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of Optum 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).
- 12.2 The Client indemnifies Optum from and against all Optum's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Optum's rights under this clause.
- 12.3 The Client irrevocably appoints Optum and each director of Optum as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. Client's Disclaimer

- 13.1 The Client hereby disclaims any right to rescind, or cancel any contract with Optum or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Optum and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

14. Defects In Materials & Returns

- 14.1 The Client shall inspect the Materials on delivery and shall within three (3) days of delivery (time being of the essence) notify Optum of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Optum 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 Optum has agreed in writing that the Client is entitled to reject, Optum's liability is limited to either (at Optum's discretion) replacing the Materials or repairing the Materials.
- 14.2 Materials will not be accepted for return other than in accordance with 14.1 above and provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
 - (b) Optum has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Client's cost within ten (10) days of the delivery date; and
 - (d) Optum will not be liable for Materials which have not been stored or used in a proper manner; and
 - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.3 Optum will not accept the return of Materials for credit.
- 14.4 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

15. Warranties

- 15.1 Subject to the conditions of warranty set out in clause 15.2 Optum warrants that if any defect in any workmanship of Optum becomes apparent and is reported to Optum within twenty-four (24) months of the date of delivery (time being of the essence) then Optum will either (at Optum's sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 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 Optum; 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 Optum shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Optum's consent.
 - (c) in respect of all claims Optum 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.

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- 15.3 For Materials not manufactured by Optum, the warranty shall be the current warranty provided by the manufacturer of the Materials. Optum 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.
- 16. Consumer Guarantees Act 1993**
- 16.1 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 Optum to the Client.
- 17. Intellectual Property**
- 17.1 Where Optum 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 Optum, and shall only be used by the Client at Optum's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Optum.
- 17.2 The Client warrants that all designs, specifications or instructions given to Optum will not cause Optum to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Optum against any action taken by a third party against Optum in respect of any such infringement.
- 17.3 The Client agrees that Optum may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Optum has created for the Client.
- 18. Default and Consequences of Default**
- 18.1 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 Optum's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes Optum any money the Client shall indemnify Optum from and against all costs and disbursements incurred by Optum in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Optum's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Optum may have under this contract, if a Client has made payment to Optum, 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 Optum under this clause 18, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 18.4 Without prejudice to any other remedies Optum may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Optum may suspend or terminate the supply of Works to the Client. Optum will not be liable to the Client for any loss or damage the Client suffers because Optum has exercised its rights under this clause.
- 18.5 Without prejudice to Optum's other remedies at law Optum shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Optum shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Optum becomes overdue, or in Optum'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 Optum;
 - (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.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies Optum may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Optum may suspend or terminate the supply of Works to the Client. Optum will not be liable to the Client for any loss or damage the Client suffers because Optum has exercised its rights under this clause.
- 19.2 Optum 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 Optum shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Optum for Works already performed. Optum shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 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 Optum as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 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.
- 20. Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by Optum is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. Optum acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Acts 1993 and 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Optum acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Optum that may result in serious harm to the Client, Optum will notify the Client in accordance with the Act. Any release of such personal information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Optum in respect of Cookies where the Client utilises Optum's website to make enquiries. Optum 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

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(c) reports are available to Optum when Optum sends an email to the Client, so Optum may collect and review that information (“collectively Personal Information”)

If the Client consents to Optum’s use of Cookies on Optum’s website and later wishes to withdraw that consent, the Client may manage and control Optum’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.

20.3 The Client authorises Optum or Optum’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 Optum from the Client directly or obtained by Optum 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.

20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Acts 1993 and 2020.

20.5 The Client shall have the right to request (by e-mail) from Optum, a copy of the Personal Information about the Client retained by Optum and the right to request that Optum correct any incorrect Personal Information.

20.6 Optum will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.

20.7 The Client can make a privacy complaint by contacting Optum via e-mail. Optum will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

21. Construction Contracts Act 2002

21.1 The Client hereby expressly acknowledges that

(a) Optum 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 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 Optum by a particular date; and
- (iv) Optum has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.

(b) if Optum 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 Optum exercises the right to suspend work, the exercise of that right does not:

- (i) affect any rights that would otherwise have been available to Optum under the Contractual Remedies Act 1979; 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 Optum suspending work under this provision.

22. Service of Notices

22.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party’s last known email address.

22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. General

23.1 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.

23.2 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 Queenstown, New Zealand.

23.3 Optum 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 Optum of these terms and conditions (alternatively Optum’s liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

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- 23.4 Optum may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of Optum.
- 23.6 Optum 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 Optum's sub-contractors without the authority of Optum.
- 23.7 The Client agrees that Optum may amend these terms and conditions by notifying 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 Optum to provide Works to the Client.
- 23.8 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.
- 23.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.