

Thank you for taking the time to read Hoults Doors Limited terms and conditions of trade.

Please review this so that you know and can follow the terms and conditions around working with Hoults Doors Limited.

Any questions? Please email manager@houltsdoors.com with the number of the section that you have a question about, and state your question clearly. We look forward to working with you on your project.

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 **“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 Customer does not wish to allow Cookies to operate in the background when using Hoults’ 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 making enquiries via the website.**
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Hoults to provide the Works as specified in any proposal, quotation, 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 **“Hoults”** means Hoults Doors Limited, its successors and assigns.
- 1.5 **“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.
- 1.6 **“Non-Conforming Product”** means 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.
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between Hoults and the Customer in accordance with clause 6 below.
- 1.8 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Goods supplied by Hoults to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Goods’ shall be interchangeable for the other).
- 1.9 **“Worksite”** means the address nominated by the Customer to which the Goods are to be supplied by Hoults.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
 - (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer 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 Customer acknowledges that the supply of Works on credit shall not take effect until the Customer has completed a credit application with Hoults and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Hoults reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance, or service provided by Hoults in relation to Goods or Works supplied is given in good faith to the Customer, or the Customer's agent and is based on Hoults' own knowledge and experience and shall be accepted without liability on the part of Hoults. Where such advice or recommendations are not acted upon then Hoults shall require the Customer or their agent to authorise commencement of the Works in writing. Hoults shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.7 Where the Customer requests or organises Hoults to provide Goods or Works and is anticipating receipt of funds from an insurance claim to cover the Price of the Goods and Works, then in the event that the insurance claim is unsuccessful the Customer acknowledges that they shall nonetheless be liable for the payment of the Price.
- 2.8 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Hoults reserves the right to vary the Price with alternative Goods (or components of the Goods) as per clause 5.2, subject to prior confirmation and agreement of both parties.
- 2.9 The Customer must notify Hoults in writing at the time of ordering, any modifications to the floor area or ceiling such as tiling, concreting, false ceiling etc.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to Hoults as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Works on the Customer's behalf and/or to request any variation to the Goods or Works on the Customer's behalf (such authority to continue until all requested Works have been completed or the Customer otherwise notifies Hoults in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise Hoults in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to Hoults for all additional costs incurred by Hoults (including Hoults' profit margin) in providing any Works, Goods or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that Hoults 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 Hoults 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 Hoults in respect of the Works.
- 4.2 If such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Hoults; the Customer:
 - (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but

(b) shall not be responsible for any additional costs incurred by Hoults arising from the error or omission.

5. **Change in Control**

- 5.1 The Customer shall give Hoults 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 phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Hoults as a result of the Customer's failure to comply with this clause.

6. **Price and Payment**

- 6.1 At Hoults' sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by Hoults to the Customer in respect of Works performed or Goods supplied; or
 - (b) Hoults' quoted Price (subject to clause 6.2) which shall be binding upon Hoults provided that the Customer shall accept Hoults' quotation in writing within thirty (30) days.
- 6.2 Hoults reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans, Worksite measures, designs, or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, pre-existing structural integrity of the supporting framework, as a result of delays from third party suppliers, difficulties of matching colour, lead times, safety considerations, prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Hoults in the cost of labour or Goods which are beyond Hoults' control.
- 6.3 Variations will be charged for on the basis of Hoults' quotation, and will be detailed in writing, and shown as variations on Hoults' invoice. The Customer shall be required to respond to any variation submitted by Hoults within ten (10) working days. Failure to do so will entitle Hoults to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Hoults' sole discretion, a reasonable deposit may be required.
- 6.5 Cash sales are to be paid in full with "clear funds" before collection or delivery of the Goods and a reasonable deposit shall be required prior to commencement of the Works.
- 6.6 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Hoults, which may be:
- (a) on completion of the of the Works;
 - (b) by way of progress payments in accordance with Hoults' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the Worksite but not yet installed;
 - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer'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 Customer by Hoults.
- 6.7 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Hoults reserves the right to treat all retentions as placing the Customer's account into default.
- 6.8 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Hoults.

- 6.9 Hoults may in its discretion allocate any payment received from the Customer towards any invoice that Hoults determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Hoults may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Hoults, payment will be deemed to be allocated in such manner as preserves the maximum value of Hoults' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.10 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 Hoults nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Hoults is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.10 prevents the Customer from the ability to dispute any invoice.
- 6.11 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Hoults an amount equal to any GST Hoults must pay for any supply by Hoults 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. Provision of the Works

- 7.1 Subject to clause 7.2 it is Hoults' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Hoults claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Hoults' control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify Hoults that the Worksite is ready.
- 7.3 Hoults 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.
- 7.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
- 7.5 Any time specified by Hoults for delivery of the Works is an estimate only and Hoults will not be liable for any loss or damage incurred by the Customer 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.

8. Risk

- 8.1 If Hoults retains ownership of the Goods under clause 13 then:
- (a) where Hoults is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. The cost of delivery is either included in the Price or is in addition to the Price as agreed between the parties. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Customer or the Customer's nominated carrier takes possession of the Goods at Hoults' address; or
 - (ii) the Goods are delivered by Hoults or Hoults' nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - (b) unless otherwise agreed, where Hoults is to both supply and install Goods then Hoults 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 Customer.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests Hoults to leave Goods outside Hoults' premises for collection or to deliver the Goods to an unattended location then such Goods

shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.

- 8.3 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that are of suitable capacity to handle the Goods once installed. If for any reason that Hoults, or employees of Hoults, reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then Hoults shall be entitled to delay installation of the Goods until Hoults is satisfied that it is safe for the installation to proceed.
- 8.4 Unless otherwise specified, the Customer is responsible for the installation, painting, and hardware of the doors.
- 8.5 The Customer acknowledges that Hoults is only responsible for parts that are replaced by Hoults and that in the event that other parts/materials, subsequently fail, the Customer agrees to indemnify Hoults against any loss or damage to the Goods, or caused by the materials, or any part thereof howsoever.
- 8.6 The Customer acknowledges that:
- (a) Goods supplied may exhibit variations in shade, colour, texture, surface, and finish, and may fade or change colour over time. Hoults will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
 - (b) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods;
 - (c) the finish, texture, and colour of painted or stained products may also vary from sales samples. Hoults accepts no liability whatsoever where such variation may occur;
 - (d) timber is a hygroscopic material subject to expansion and contraction; therefore, Hoults will accept no responsibility for gaps that may appear in the doors during prolonged dry periods;
 - (e) Goods supplied may:
 - (i) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (ii) mark or stain if exposed to certain substances;
 - (iii) be damaged or disfigured by impact or scratching.
 - (f) all raw products are required to be painted, stained, or fully sealed immediately after installation. The Customer shall not hold Hoults responsible for the finished state of the products if the Customer fails to finish the raw products immediately or if at all, nor if the Customer fails to apply Goods to paint or stain or seal the doors without following the instructions applicable to such Goods or the suitability of those Goods for the purpose required.
- 8.7 Whilst every effort shall be taken by Hoults to detect any structural defects prior to installation, the Customer shall indemnify Hoults against any damage (including, but not limited to, aged or loose mortar internally or externally, resulting from the normal installation process, which costs of any remedial work shall be at the Customer's responsibility. If it is agreed that Hoults shall organise or carry out the remedial works, then this shall be a variance as per clause 6.2.

9. Specifications, Plans and Measurements

- 9.1 Hoults 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 of this information provided by the Customer is inaccurate, Hoults accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Customer gives information relating to measurements and quantities of Goods required in completing the Works, it is the Customer's responsibility to verify the accuracy of the measurements and quantities before the Customer or Hoults places an order based on these measurements and quantities.

Hoults accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

- 9.3 If the giving of an estimate or quotation for the supply of Goods involves Hoults estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of Hoults' estimated measurements and quantities before the Customer places an order based on such estimate or accepts such quotation.
- 9.4 Should the Customer require any changes to Hoults' estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 9.5 The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in Hoults' 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 of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Hoults; and
 - (b) while Hoults may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that Hoults has given these in good faith and are estimates based on industry prescribed estimates.

10. Worksite Access and Condition

- 10.1 The Customer shall ensure that Hoults has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). Hoults shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Hoults.
- 10.2 The Customer agrees to be present at the Worksite when and as reasonably requested by Hoults and its employees, contractors and/or agents.
- 10.3 *Worksite Inductions*
- (a) in the event the Customer requires an employee or sub-contractor of Hoults to undertake a Worksite induction during working hours, the Customer 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 Customer shall be liable to pay Hoults' standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where Hoults is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out Hoults' 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 Customer and/or third party acting on behalf of the Customer must at all times be accompanied by Hoults.

11. Underground Locations

- 11.1 Prior to Hoults commencing any work the Customer must advise Hoults of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Customer 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 Worksite.
- 11.2 Whilst Hoults will take all care to avoid damage to any underground services the Customer agrees to indemnify Hoults 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 11.1.

12. Compliance with Laws

- 12.1 The Customer and Hoults 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.
- 12.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, 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 any current relevant Australian/New Zealand Standards applicable.
- 12.3 Where the Customer has supplied products for Hoults to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in Hoults' opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then Hoults 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.
- 12.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 12.5 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), Hoults 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 head contractor.

13. Title

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

- (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 Hoults; and
- (i) Hoults may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. Personal Property Securities Act 1999 (“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 Goods that have previously been supplied and that will be supplied in the future by Hoults to the Customer and the proceeds from such Goods as listed by Hoults to the Customer in invoices rendered from time to time.
- 14.2 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 Hoults may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Hoults for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Hoults; and
 - (d) immediately advise Hoults of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 Unless otherwise agreed to in writing by Hoults, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.4 The Customer shall unconditionally ratify any actions taken by Hoults under clauses 14.1 to 14.3.
- 14.5 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of Hoults agreeing to supply the Works, 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, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Customer indemnifies Hoults from and against all Hoults’ costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Hoults’ rights under this clause.
- 15.3 The Customer irrevocably appoints Hoults and each director of Hoults as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer’s behalf.

16. Defects and Returns

- 16.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Hoults of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Customer shall afford Hoults an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. 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 Hoults has agreed in writing that the Customer is entitled to reject, Hoults' liability is limited to either (at Hoults' discretion) replacing the Goods or repairing the Goods.

16.2 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 16.1; and
- (b) Hoults has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within five (5) days of the delivery date; and
- (d) Hoults will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

16.3 If Hoults accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 16.2(b) Hoults will reimburse the Customer's actual and reasonable costs of return delivery.

16.4 Subject to clause 16.1, non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

17. Warranties

17.1 Subject to the conditions of warranty set out in clause 17.2 Hoults warrants that if any defect in any workmanship, prehanging or installation provided by Hoults becomes apparent and is reported to Hoults within five (5) years of the date of delivery (time being of the essence) then Hoults will either (at Hoults' sole discretion) replace or remedy the defect and allowance must be made by the Customer that Hoults may visit the Worksite to effect repairs to any claimed defect or remove the doors for Hoults to take back to Hoults' factory for repair before reverting to replacement or credit.

17.2 The conditions applicable to the warranty given by clause 17.1 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 Customer to properly maintain any Goods or serviced item; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Hoults; or
 - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods or serviced item 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 Hoults shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Hoults' consent.
- (c) in respect of all claims Hoults shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

17.3 Further to clause 17.2, to qualify for any warranty, doors and hardware must be correctly installed, and doors must be correctly finished for the environment (including, but not limited to, entrance doors and doors installed in humid environments such as bathrooms, etc.) and according to the manufacturer's specifications.

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

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

18. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

- 18.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 (“CGA”) do not apply to the supply of Goods by Hoults to the Customer.
- 18.2 Hoults agrees to abide by the provisions of the Fair Trading Act 1986 (“FTA”).

19. Intellectual Property

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

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Hoults’ sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes Hoults any money the Customer shall indemnify Hoults from and against all costs and disbursements incurred by Hoults in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Hoults’ collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies Hoults may have under this Contract, if a Customer has made payment to Hoults, 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 Hoults under this clause 20, 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.
- 20.4 Without prejudice to Hoults’ other remedies at law Hoults shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Hoults shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Hoults becomes overdue, or in Hoults’ opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Hoults;
 - (c) the Customer 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 Customer or any asset of the Customer.

21. Cancellation

- 21.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Goods or Works to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

- 21.2 If Hoults, due to reasons beyond Hoults' reasonable control, is unable to deliver any Goods or Works to the Customer, Hoults may cancel any contract to which these terms and conditions apply or cancel delivery of Goods or Works at any time before the Goods or Works are delivered by giving written notice to the Customer. On giving such notice Hoults shall repay to the Customer any money paid by the Customer for the Goods or Works. Hoults shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 The Customer may cancel delivery of the Goods and/or Works by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept delivery of the Goods and/or Works shall place the Customer in breach of this Contract.
- 21.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Policy

- 22.1 All emails, documents, images, or other recorded information held or used by Hoults is **"Personal Information"** as defined and referred to in clause 22.3 and therefore considered confidential. Hoults acknowledges its obligation in relation to the handling, use, disclosure, and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. Hoults acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Hoults that may result in serious harm to the Customer, Hoults will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to Hoults in respect of Cookies where the Customer utilises Hoults' website to make enquiries. Hoults 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Hoults when Hoults sends an email to the Customer, so Hoults may collect and review that information ("collectively Personal Information")
- If the Customer consents to Hoults' use of Cookies on Hoults' website and later wishes to withdraw that consent, the Customer may manage and control Hoults' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Customer authorises Hoults or Hoults' 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 (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 Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Hoults from the Customer directly or obtained by Hoults 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 Customer.
- 22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Customer shall have the right to request (by e-mail) from Hoults, a copy of the Personal Information about the Customer retained by Hoults and the right to request that Hoults correct any incorrect Personal Information.

- 22.6 Hoults will destroy Personal Information upon the Customer'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.
- 22.7 The Customer can make a privacy complaint by contacting Hoults via e-mail. Hoults 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

23. Suspension of Works

- 23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) Hoults 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 Customer, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Hoults by a particular date; and
 - (iv) Hoults has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Hoults 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 Customer or by any person claiming through the Customer; 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 Hoults exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Hoults under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Hoults suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes Hoults from continuing the Works or performing or complying with Hoults' obligations under this Contract, then without prejudice to Hoults' other rights and remedies, Hoults may suspend the Works immediately after serving on the Customer 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 Hoults as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, Hoults suspends the Works and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, Hoults shall be entitled to terminate the Contract, in accordance with clause 21.

24. Service of Notices

- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;

- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by 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.

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

25. Trusts

25.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Hoults may have notice of the Trust, the Customer covenants with Hoults as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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 Customer against the Trust, the trustees and 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;
- (c) the Customer will not during the term of the Contract without consent in writing of Hoults (Hoults 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;
 - (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 fund or trust property.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Lower Hutt, New Zealand.
- 26.4 Subject to the CGA, the liability of Hoults and the Customer under this Contract shall be limited to the Price.
- 26.5 Hoults may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 26.6 The Customer cannot licence or assign without the written approval of Hoults.
- 26.7 Hoults 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 Customer agrees and understands that they have no authority to give any instruction to any of Hoults' sub-contractors without the authority of Hoults.
- 26.8 The Customer agrees that Hoults may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to 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 Hoults to provide Works to the Customer.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any

Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to Hoults, following cessation of a Force Majeure.

- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.