

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 **“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.
- 1.3 **“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 the Seller’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.**
- 1.4 **“Incidental Items”** means any goods, documents, designs, drawings, or materials supplied, consumed, created or deposited incidentally by the Seller in the course of it conducting, or supplying to the Client, any Services.
- 1.5 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between the Seller and the Client in accordance with clause 5 of this Contract.
- 1.6 **“Seller”** means Escudo Coatings Limited, its successors and assigns.
- 1.7 **“Services”** means all Services supplied by the Seller to the Client at the Client’s request from time to time.

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 Client places an order for, or accepts Services provided by the Seller.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with the Seller and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance, or service provided by the Seller in relation to Services supplied is given in good faith to the Client, or the Client’s agent and is based on the Seller’s own knowledge and experience and shall be accepted without liability on the part of the Seller. Where such advice or recommendations are not acted upon then the Seller shall require the Client or their agent to authorise commencement of the Services in writing. The Seller shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Seller 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 the Seller 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 the Seller in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Client:
- (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 the Seller arising from the error or omission.

4. Change in Control

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

5. Price and Payment

- 5.1 At the Seller’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Client; or
 - (b) the Seller’s quoted Price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Seller reserves the right to change the Price:
- (a) if a variation to the Services originally scheduled (including, but not limited to, any variation to the quantity of items to be galvanised, change to colour selection, or the suitability of the items; or
 - (b) as a result of any increase to the Seller in the cost of materials and labour, which are beyond the Seller’s control.

Escudo Coatings Limited – Terms & Conditions of Trade

- 5.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller 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.
- 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
- (a) on delivery of the Services;
 - (b) by way of instalments/progress payments in accordance with the Seller's payment schedule;
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted 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 the Seller.
- 5.5 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and the Seller.
- 5.6 The Seller may in its discretion allocate any payment received from the Client towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards.
- 5.7 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 the Seller nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Seller in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Seller investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Seller placing the Client's account into default and subject to default interest in accordance with clause 15.1.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for providing the Seller's Services. 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.

6. Provision of the Services

- 6.1 At the Seller's sole discretion delivery of the Services shall take place when:
- (a) the Services are supplied to the Client at the Seller's address; or
 - (b) the Services are supplied to the Client at the Client's nominated address.
- 6.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 6.3 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 6.4 Subject to clause 6.5 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably practicable.
- 6.5 The Services' commencement date will be extended, and the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller's control.
- 6.6 The Seller may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 6.7 Any time specified by the Seller for delivery of the Services is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Seller shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

7. Risk

- 7.1 Irrespective of whether the Seller retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Seller may repossess the Incidental Items. The Client must insure all Incidental Items on or before delivery.
- 7.2 The Seller reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 7.1.
- 7.3 The Client warrants that the surface in or upon which the Services are to be applied to is free from any contaminants and will sustain the application and Services incidental thereto. The Seller shall not be liable for any claims, demands, losses, damages, costs, and expenses howsoever caused or arising in connection with existing contaminants that cause any failure or defects in the Services.
- 7.4 The Seller shall not be held liable for:
- (a) an existing coating where the Seller's paint/powder coating has bonded to the existing coating and weakened, effected, or changes the previous coating causing any kind of flake, crack, blemish or surface defect;
 - (b) the quality of the Services if the Client does not follow the Seller's recommendations as to the preparation and/or number of coats of paint/powder coating required to obtain the final finish if the Client chooses to accept a reduced Price based on inadequate preparation and/or fewer coats of paint/powder coatings;
 - (c) any items subject to the coating process which uncovers faults and imperfections in the "raw materials" after processing is complete which is beyond the Seller's control where the following "raw materials" are supplied:
 - (i) hot dipped galvanised products;
 - (ii) galvanised products;
 - (iii) inferior steel or aluminium;
 - (iv) cast steel or aluminium; or
 - (v) where the Client's goods/items fail to retain their original construction or experience any adverse effects due to extreme heat exposure during the coating process and/or during the preparation and coating process; and

Escudo Coatings Limited – Terms & Conditions of Trade

- (d) drilling of hole(s) for the purpose of hanging item(s) for powder coating unless the Client specifies specifically where the Seller cannot drill hole(s) for this purpose. The Seller reserves the right to drill hole(s) for the purpose of powder coating but shall at all times, act in the best interest of the Client to ensure such drilling of holes shall not affect the appearance on the end product.
- 7.5 The Client acknowledges that, after completion of the Services, the finished items may:
- (a) exhibit variations in shade, colour, texture, surface, and finish, and may fade or change colour over time. The Seller will make every effort to match batches of product used in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (b) mark or stain if exposed to certain substances; and
 - (c) be damaged or disfigured by impact or scratching.
- 7.6 The Client accepts and acknowledges that all coatings should be maintained in accordance with the manufacturer's recommendations, (*where applicable*) copies of said information can be provided upon request from the Seller. The Client acknowledges and agrees that the Seller shall not be held liable for any loss, damages or costs arising due to the Client's failure to comply with this clause.
- 8. Compliance with Laws**
- 8.1 The Client and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 9. Title**
- 9.1 The Seller and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid the Seller all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Seller in respect of all Contracts between the Seller and the Client.
- 9.2 Receipt by the Seller 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 and until then the Seller's ownership in the Incidental Items or rights in respect of the Services shall continue.
- 9.3 It is further agreed that:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to the Seller immediately upon request by the Seller;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
 - (d) the Client should not convert or process the Incidental Items 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 the Seller and must dispose of or return the resulting product to the Seller as the Seller so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Seller; and
 - (f) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Incidental Items are kept and recover possession of the Incidental Items.
- 10. Personal Property Securities Act 1999 ("PPSA")**
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Incidental Items previously supplied by the Seller to the Client;
 - (b) all Incidental Items that will be supplied in the future by the Seller to the Client and the proceeds from such Incidental Items as listed by the Seller to the Client in invoices rendered from time to time; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Seller for Services – that have previously been provided and that will be provided in the future by the Seller to the Client.
- 10.3 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 the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items or the proceeds of such Incidental Items in favour of a third party without the prior written consent of the Seller.
- 10.4 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.5 The Client shall unconditionally ratify any actions taken by the Seller under clauses 10.1 to 10.4.
- 10.6 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of the Seller agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, 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). 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.
- 11.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 11.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. Defects

- 12.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 12.2 For defective Services, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 12.1.

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

- 13.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Services by the Seller to the Client.
- 13.2 The Seller agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

14. Intellectual Property

- 14.1 Where the Seller has designed, drawn or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 14.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 14.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Seller has created for the Client.

15. Default and Consequences of Default

- 15.1 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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 15.3 Further to any other rights or remedies the Seller may have under this Contract, if a Client has made payment to the Seller, 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 the Seller under this clause 15, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 15.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller'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 the Seller;
 - (c) the Client becomes insolvent, 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.

16. Cancellation

- 16.1 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 of Services 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.
- 16.2 If the Seller, due to reasons beyond the Seller's reasonable control, is unable to deliver any Services to the Client, the Seller may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 The Client may cancel delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. Failure by the Client to otherwise accept delivery of the Services shall place the Client in breach of this Contract.

17. Privacy Policy

- 17.1 All emails, documents, images, or other recorded information held or used by the Seller is **“Personal Information”** as defined and referred to in clause 17.3 and therefore considered confidential. The Seller 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 and any statutory requirements where relevant in a European Economic Area “EEA” under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by the Seller that may result in serious harm to the Client, the Seller will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Seller in respect of Cookies where the Client utilises the Seller’s website to make enquiries. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Seller when the Seller sends an email to the Client, so the Seller may collect and review that information (“collectively Personal Information”).
- If the Client consents to the Seller’s use of Cookies on the Seller’s website and later wishes to withdraw that consent, the Client may manage and control the Seller’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 17.3 The Client authorises the Seller or the Seller’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 the Seller from the Client directly or obtained by the Seller 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.
- 17.4 Where the Client is an individual the authorities under clause 17.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 17.5 The Client shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Client retained by the Seller and the right to request that the Seller correct any incorrect Personal Information.
- 17.6 The Seller 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.
- 17.7 The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller 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>.

18. Service of Notices

- 18.1 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.
- 18.2 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.

19. Trusts

- 19.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust (“Trust”) then whether or not the Seller may have notice of the Trust, the Client covenants with the Seller as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client 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 Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

20. General

- 20.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 20.2 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.
- 20.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Dunedin, New Zealand.
- 20.4 Subject to the CGA, the liability of the Seller and the Client under this Contract shall be limited to the Price.
- 20.5 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 20.6 The Client cannot licence or assign without the written approval of the Seller.
- 20.7 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 20.8 The Client agrees that the Seller may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Seller to provide Services to the Client.
- 20.9 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 Client to make a payment to the Seller, following cessation of a Force Majeure.
- 20.10 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.