Industrial & Farm Services Limited T/A Thinkwater Bay of Plenty – Terms & Conditions of Trade

1. Definitions

1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 "Thinkwater BOP" means Industrial & Farm Services Limited T/A Thinkwater Bay of Plenty, its successors and assigns or any person acting on behalf of and with the authority of Industrial & Farm Services Limited T/A Thinkwater Bay of Plenty.

1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Thinkwater BOP 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 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Thinkwater BOP to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.6 "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 ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**

1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between Thinkwater BOP and the Customer in accordance with clause 6 below.

2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is 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 Thinkwater BOP and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Works request exceeds the Customers credit limit and/or the account exceeds the payment terms, Thinkwater BOP reserves the right to refuse delivery.

2.6 If Pseudomonas syringae pv. actinidiae (Psa) or Mycoplasma bovis is present onsite, it is the Customer's responsibility to inform Thinkwater BOP of the same. The Customer must provide Thinkwater BOP with the appropriate facilities to comply with local Psa or Mycoplasma decontamination regulations.

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 Customer acknowledges and accepts that Thinkwater BOP 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 Thinkwater BOP 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 Thinkwater BOP in respect of the Works.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Thinkwater BOP; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to Thinkwater BOP as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any materials or Services on the Customer's behalf and/or to request any variation to the works on the Customer's behalf (such authority to continue until all requested works have been completed or the Customer otherwise notifies Thinkwater BOP in writing that said person is no longer the Customer's duly authorised representative).

4.2 In the event that the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Thinkwater BOP in writing of the parameters of the limited authority granted to their representative.

4.3 The Customer specifically acknowledges and accepts that they will be solely liable to Thinkwater BOP for all additional costs incurred by Thinkwater BOP (including Thinkwater BOP's profit margin) in providing any works, materials, Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

5.1 The Customer shall give Thinkwater BOP 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 Thinkwater BOP as a result of the Customer's failure to comply with this clause.

6. Price and Payment

6.1 At Thinkwater BOP's sole discretion the Price shall be either:
(a) as indicated on invoices provided by Thinkwater BOP to the Customer in respect of Works performed or Materials supplied; or
(b) Thinkwater BOP's estimated Price (subject to clause **Error! Reference source not found.**). The final price can only be ascertained upon completion of the Works. Variances in the estimated Price of more than 10% will be subject to Customer approval before proceeding with the Works; or
(c) Thinkwater BOP's quoted Price (subject to clause 6.2) which shall be binding upon Thinkwater BOP provided that the Customer shall accept Thinkwater BOP's quotation in writing within thirty (30) days.

6.2 Thinkwater BOP 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 site access, ready availability of Materials, variations in quantity or volume of Materials to be supplied, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Customer, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
(d) in the event of increases to Thinkwater BOP in the cost of labour or materials which are beyond Thinkwater BOP's control.

6.3 Variations will be charged for on the basis of Thinkwater BOP's quotation, and will be detailed in writing, and shown as variations on Thinkwater BOP's invoice. The Customer shall be required to respond to any variation submitted by Thinkwater BOP within ten (10) working days. Failure to do so will entitle Thinkwater BOP 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 Thinkwater BOP's sole discretion a non-refundable deposit may be required.

6.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Thinkwater BOP, which may be:
(a) on completion of the Works; or
(b) by way of progress payments in accordance with Thinkwater BOP'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;
(c) for certain approved Customer's, 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 Thinkwater BOP.

6.6 Payment may be made by cash, cheque, electronic/on-line banking, Farmlands Card, Debit Card or by any other method as agreed to between the Customer and Thinkwater BOP.

6.7 Thinkwater BOP may in its discretion allocate any payment received from the Customer towards any invoice that Thinkwater BOP determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Thinkwater BOP may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Thinkwater BOP, payment will be deemed to be allocated in such manner as preserves the maximum value of Thinkwater BOP's Purchase Money Security Interest (as defined in the PPSA) in the Materials.

6.8 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 Thinkwater BOP nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Thinkwater BOP an amount equal to any GST Thinkwater BOP must pay for any supply by Thinkwater BOP under this or any other agreement for the sale of the Materials. 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 Thinkwater BOP's 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 Thinkwater BOP claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Thinkwater BOP's control, including but not limited to any failure by the Customer to:
(a) make a selection; or
(b) have the site ready for the Works; or
(c) notify Thinkwater BOP that the site is ready.

7.3 The cost of delivery will be in addition to the Price.

7.4 Thinkwater BOP 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.

7.5 Any time specified by Thinkwater BOP for delivery of the Works is an estimate only and Thinkwater BOP 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. In the event that Thinkwater BOP is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then Thinkwater BOP 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.

8. Risk

8.1 If Thinkwater BOP retains ownership of the Materials under clause 13 then:
(a) where Thinkwater BOP is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer 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 Customer or the Customer's nominated carrier takes possession of the Materials at Thinkwater BOP's address; or
(ii) the Materials are delivered by Thinkwater BOP or Thinkwater BOP's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
(b) where Thinkwater BOP is to both supply and install Materials then Thinkwater BOP 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 Thinkwater BOP to leave Materials outside Thinkwater BOP'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 Customer and it shall be the Customer'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 Customer's expense.

8.3 Where the Customer has supplied materials for Thinkwater BOP to complete the Works, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Thinkwater BOP shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

8.4 Any advice, recommendation, information, assistance or service provided by Thinkwater BOP in relation to Works provided is given in good faith, is based on Thinkwater BOP's own knowledge and experience and shall be accepted without liability on the part of Thinkwater BOP and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Works.

8.5 Where Thinkwater BOP is required to install the Materials the Customer warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and Thinkwater BOP shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

8.6 In the event that during the course of the Works, Thinkwater BOP discovers any fossils, artefacts or any other remains of geological or archaeological interest are discovered Thinkwater BOP reserves the right to halt all Works, remove any of their equipment from the Worksite and immediately notify the Customer. Unless subject to clause 27.8, the Customer accepts and agrees that all additional costs that may be incurred by Thinkwater BOP as a result of any such delays (including but not limited to in the event Thinkwater BOP is unable to remove their equipment from the Worksite, etc.) shall be borne by the Customer and shall be treated as a variation in accordance with clause 6.2.

9. Dimensions, Plans and Specifications

9.1 Thinkwater BOP 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, Thinkwater BOP accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

9.2 Where the Customer is to supply Thinkwater BOP with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. Thinkwater BOP shall not be liable whatsoever for any errors in the Works that are caused by incorrect or inaccurate data being supplied by the Customer.

9.3 In the event the Customer gives information relating to measurements and quantities of Materials required in completing the Works, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Thinkwater BOP places an order based on these measurements and quantities. Thinkwater BOP accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

10. Access

10.1 The Customer shall ensure that Thinkwater BOP has clear and free access to the site at all times to enable them to undertake the Works, and that such access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by Thinkwater BOP. Thinkwater BOP 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 Thinkwater BOP.

11. Underground Locations

11.1 Prior to Thinkwater BOP commencing any work the Customer must advise Thinkwater BOP of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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 site.

11.2 Whilst Thinkwater BOP will take all care to avoid damage to any underground services the Customer agrees to indemnify Thinkwater BOP 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 Thinkwater BOP 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 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

12.3 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Thinkwater BOP 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 site or where they may be acting as a subcontractor for the Customer who has engaged a thirty party head contractor.

12.4 The Customer shall advise Thinkwater BOP of the precise location of all known risks present at the site, and where applicable, induct Thinkwater BOP's workers (including any sub-contractors as required), on:
(a) any WorkSafe management system;
(b) site safety expectations;
(c) emergency provisions;
(d) risks and their control measures; and
(e) incident reporting expectations.

13. Title

13.1 Thinkwater BOP and the Customer agree that ownership of the Materials shall not pass until:
(a) the Customer has paid Thinkwater BOP all amounts owing to Thinkwater BOP; and
(b) the Customer has met all of its other obligations to Thinkwater BOP.

13.2 Receipt by Thinkwater BOP 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 Materials passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Thinkwater BOP on request;
(b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Thinkwater BOP and must pay to Thinkwater BOP 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 Thinkwater BOP shall be sufficient evidence of Thinkwater BOP's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Thinkwater BOP to make further enquiries;
(d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Thinkwater BOP and must pay or deliver the proceeds to Thinkwater BOP on demand;
(e) the Customer should not convert or process the Materials 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 Thinkwater BOP and must sell, dispose of or return the resulting product to Thinkwater BOP as it so directs;
(f) unless the Materials have become fixtures the Customer irrevocably authorises Thinkwater BOP to enter any premises where Thinkwater BOP believes the Materials are kept and recover possession of the Materials;
(g) Thinkwater BOP may recover possession of any Materials in transit whether or not delivery has occurred;
(h) the Customer 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 Thinkwater BOP;
(i) Thinkwater BOP may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials 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 Materials and/or collateral (account) – being a monetary obligation of the Customer to Thinkwater BOP for Works – that have previously been supplied and that will be supplied in the future by Thinkwater BOP to the Customer.

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 Thinkwater BOP may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, Thinkwater BOP 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 Thinkwater BOP; and
(d) immediately advise Thinkwater BOP 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.

14.3 Thinkwater BOP and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

14.5 Unless otherwise agreed to in writing by Thinkwater BOP, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14.6 The Customer shall unconditionally ratify any actions taken by Thinkwater BOP under clauses 14.1 to 14.5.

14.7 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 Thinkwater BOP 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, 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).

15.2 The Customer indemnifies Thinkwater BOP from and against all Thinkwater BOP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Thinkwater BOP's rights under this clause.

15.3 The Customer irrevocably appoints Thinkwater BOP and each director of Thinkwater BOP 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 In Materials

16.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify Thinkwater BOP of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Thinkwater BOP an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Thinkwater BOP has agreed in writing that the Customer is entitled to reject, Thinkwater BOP's liability is limited to either (at Thinkwater BOP's discretion) replacing the Materials or repairing the Materials.

16.2 Materials will not be accepted for return other than in accordance with 16.1 above.

17. Returns

17.1 Returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 16.1; and
(b) Thinkwater BOP has agreed in writing to accept the return of the Materials; and
(c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
(d) Thinkwater BOP 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.

17.2 Thinkwater BOP may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty five percent (25%) of the value of the returned Materials plus any freight

18. Warranties

18.1 Subject to the conditions of warranty set out in clause 18.2 Thinkwater BOP warrants that if any defect in any workmanship of Thinkwater BOP becomes apparent and is reported to Thinkwater BOP within twelve (12) months of the date of delivery (time being of the essence) then Thinkwater BOP will either (at Thinkwater BOP's sole discretion) replace or remedy the workmanship.

18.2 The conditions applicable to the warranty given by clause 18.1 are:
(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
(i) failure on the part of the Customer to properly maintain any Materials; or
(ii) failure on the part of the Customer to follow any instructions or guidelines provided by Thinkwater BOP; 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 Thinkwater BOP shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Thinkwater BOP's consent.
(c) in respect of all claims Thinkwater BOP 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.

18.3 For Materials not manufactured by Thinkwater BOP, the warranty shall be the current warranty provided by the manufacturer of the Materials. Thinkwater BOP 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.

19. Consumer Guarantees Act 1993

19.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Thinkwater BOP to 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 Thinkwater BOP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2 If the Customer owes Thinkwater BOP any money the Customer shall indemnify Thinkwater BOP from and against all costs and disbursements incurred by Thinkwater BOP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Thinkwater BOP's collection agency costs, and bank dishonour fees).

20.3 Further to any other rights or remedies Thinkwater BOP may have under this Contract, if a Customer has made payment to Thinkwater BOP, 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 Thinkwater BOP 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 Thinkwater BOP's other remedies at law Thinkwater BOP shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Thinkwater BOP shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Thinkwater BOP becomes overdue, or in Thinkwater BOP's 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 Thinkwater BOP;
(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 rights or remedies Thinkwater BOP may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice/s) then Thinkwater BOP may suspend the Works immediately. Thinkwater BOP will not be liable to the Customer for any loss or damage the Customer suffers because Thinkwater BOP has exercised its rights under this clause.

21.2 Thinkwater BOP 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 Customer. On giving such notice Thinkwater BOP shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Thinkwater BOP for Works already performed. Thinkwater BOP shall not be liable for any loss or damage whatsoever arising from such cancellation.

21.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Thinkwater BOP as a direct result of the cancellation (including, but not limited to, any loss of profits).

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 Thinkwater BOP is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. Thinkwater BOP acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Thinkwater BOP acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Thinkwater BOP that may result in serious harm to the Customer, Thinkwater BOP will notify the Customer 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 Customer by written consent, unless subject to an operation of law.

22.2 Notwithstanding clause 22.1, privacy limitations will extend to Thinkwater BOP in respect of Cookies where transactions for purchases/orders transpire directly from Thinkwater BOP's website. Thinkwater BOP 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 Thinkwater BOP when Thinkwater BOP sends an email to the Customer, so Thinkwater BOP may collect and review that information ("collectively Personal Information")
In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via Thinkwater BOP's website.

22.3 The Customer authorises Thinkwater BOP or Thinkwater BOP's agent to:
(a) access, collect, retain and use any information about the Customer;
(i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (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 Thinkwater BOP from the Customer directly or obtained by Thinkwater BOP 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 1993.

22.5 The Customer shall have the right to request Thinkwater BOP for a copy of the Personal Information about the Customer retained by Thinkwater BOP and the right to request Thinkwater BOP to correct any incorrect Personal Information about the Customer held by Thinkwater BOP.

23. Service of Notices

23.1 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.

23.2 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.

24. Trusts

24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Thinkwater BOP may have notice of the Trust, the Customer covenants with Thinkwater BOP as follows:
(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
(b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
(c) the Customer will not without consent in writing of Thinkwater BOP (Thinkwater BOP 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 property.

25. Unpaid Seller's Rights

25.1 Where the Customer has left any item with Thinkwater BOP for repair, modification, exchange or for Thinkwater BOP to perform any other Service in relation to the item and Thinkwater BOP has not received or been tendered the whole of the Price, or the payment has been dishonoured, Thinkwater BOP shall have:
(a) a lien on the item;
(b) the right to retain the item for the Price while Thinkwater BOP is in possession of the item;
(c) a right to sell the item.

25.2 The lien of Thinkwater BOP shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

26. Customer's Disclaimer

26.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Thinkwater BOP or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Thinkwater BOP and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

27. General

27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Tauranga in New Zealand.

27.4 Thinkwater BOP shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Thinkwater BOP of these terms and conditions (alternatively Thinkwater BOP's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

27.5 Thinkwater BOP may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

27.6 The Customer cannot licence or assign without the written approval of Thinkwater BOP.

27.7 Thinkwater BOP 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 Thinkwater BOP's sub-contractors without the authority of Thinkwater BOP.

27.8 The Customer agrees that Thinkwater BOP 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 Thinkwater BOP to provide Works to the Customer.

27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

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

Please note that a larger print version of these terms and conditions is available from Thinkwater BOP on request. #23975 © Copyright – EC Credit Control 1999 - 2018