

1. Definitions

- 1.1 **"Beejays"** means Beejays Wellington Limited, its successors and 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 Customer does not wish to allow Cookies to operate in the background when using Beejays' 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.
- 1.4 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Beejays to provide the Services 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.
- 1.5 **"Goods"** means all Goods or Services supplied by Beejays to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Beejays and the Customer in accordance with clause 6 below.

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 the Goods.
- 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 Goods on credit shall not take effect until the Customer has completed a credit application with Beejays and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Beejays reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by Beejays in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on Beejays' own knowledge and experience and shall be accepted without liability on the part of Beejays. Where such advice or recommendations are not acted upon then Beejays shall require the Customer or their agent to authorise commencement of the Services in writing. Beejays shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 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, Beejays reserves the right to substitute comparable Goods and vary the Price as per clause 6.2. In all such cases Beejays will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Services on hold, until such time as Beejays and the Customer agree to such changes.
- 2.8 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 The Customer acknowledges that Beejays shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Beejays, that person shall have the full authority of the Customer to order any Services, Goods and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Beejays for all additional costs incurred by Beejays (including Beejays' profit margin) in providing any Services, Goods or variation/s requested thereto by the Customer's duly authorised representative.

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that Beejays 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 Beejays 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 Beejays in respect of the Services.
- 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 Beejays; 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 Beejays arising from the error or omission.

5. Change in Control

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

6. Price and Payment

- 6.1 At Beejays' sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Beejays to the Customer; or
 - (a) Beejays' quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days. Beejays' quotation:
 - (i) will be subject to a check on measurements were based on plans supplied by the Customer;
 - (ii) unless specified, is based upon floors being level and any required under covering floor prep completed and/or walls being free of window furnishings and drapes.
- 6.2 Beejays 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 Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, Services supplied outside normal business hours, obscured site defects which require remedial work, unknown pre-existing condition of the subfloor, health hazards and safety considerations, change of design or prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Beejays in the cost of labour or materials which are beyond Beejays' control.
- 6.3 Variations will be charged for on the basis of Beejays' quotation, and will be detailed in writing, and shown as variations on Beejays' invoice. The Customer shall be required to respond to any variation submitted by Beejays within ten (10) working days. Failure to do so will entitle Beejays 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 Beejays' sole discretion a seventy five (75%) percent non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Beejays, which may be:
- (a) on or before delivery of the Goods;
 - (b) 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;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Beejays.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be used other than to remedy defects in the performance of Beejays' obligations under the Contract.
- 6.7 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Beejays.
- 6.8 Beejays may in its discretion allocate any payment received from the Customer towards any invoice that Beejays determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Beejays may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Beejays, payment will be deemed to be allocated in such manner as preserves the maximum value of Beejays' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 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 Beejays nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Beejays is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Customer from the ability to dispute any invoice.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Beejays an amount equal to any GST Beejays must pay for any supply by Beejays under this or any other contract 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. Delivery of Goods

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Beejays' address; or
 - (b) Beejays (or Beejays' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 7.3 Beejays may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by Beejays for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Beejays will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then Beejays shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Accuracy of Customer's Plans and Measurements

- 8.1 Beejays 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, Beejays accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

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

9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Beejays is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Beejays is sufficient evidence of Beejays' rights to receive the insurance proceeds without the need for any person dealing with Beejays to make further enquiries.
- 9.3 If the Customer requests Beejays to leave Goods outside Beejays' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 9.4 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that Beejays reasonably form the opinion that the Customer's premises is not safe for the Services to proceed then Beejays shall be entitled to delay the provision of the Services until Beejays is satisfied that it is safe for the installation.
- 9.5 The Customer acknowledges that:
- (a) variations of colour, shade and grain are inherent in all products and dye lots. While every effort will be taken by Beejays to match colour, shade or grain of product, Beejays shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied;
 - (b) some installations of cut-pile carpeting develop irregular light and dark areas. These are caused by some pile yarns changing their original direction of lay, and thereby changing the way light is reflected or absorbed from their surface. The occurrence of permanent pile reversal is related to location of the carpet. It is not a manufacturing fault or defect, and apart from affecting appearance, has no detrimental effect on the performance of the carpet;
 - (c) hardboard underlay joins may show through highly polished or very smooth resilient floor coverings under certain light conditions.
 - (d) any damage to floor/wall coverings by an outside agent is the responsibility of the Customer. Any requests to Beejays to make any repair not caused by Beejays will be charged at the normal current rates;
 - (e) samples displayed in the showroom may appear different from the finished Goods once installed due to differences in the respective environments which may include, but not be limited to the level and type of lighting, influence from the colour of surrounding surfaces, underfloor structures, and the like. These differences are environmental only and are not as a result of a defect in the Goods;
 - (f) Beejays shall not be liable for any loss, damages or costs however arising in the event that:
 - (i) a heavy or sharp object is dropped or falls on the finished flooring, as some Goods supplied will show scratches and will get cut due to the soft and flexible surface; or
 - (ii) an object is dragged across the flooring can rip and tear; or
 - (iii) any discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).
 - (g) vinyl will not fully seal a floor around the edges particularly around showers or baths; the Customer also agrees water can get underneath and therefore bubble and/or discolour the vinyl. Beejays shall not be held liable for any loss, damages or costs however arising due to the same;
 - (h) while all care is taken during installation, scratches on skirting are at times unavoidable; and
 - (i) whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor.
- 9.6 In the event Beejays has provided Goods to the Customer on a 'supply-only' basis, Beejays shall not be liable for the installation of the Goods. It is the Customer's sole responsibility to follow the manufacturer's installation recommendations.
- 9.7 Beejays does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in bison board, or thin line board will show through the vinyl.
- 9.8 Beejays will not be responsible for the adjustment of any doors to allow for the new flooring height due to the Customer's selection of the Goods.
- 9.9 Where the Goods supplied include a directional pattern the Customer shall advise Beejays at the time of the quotation should they have a preference as to the direction in which the pattern should run. If no preference is given to Beejays by the Customer then Beejays will install at their discretion.
- 9.10 Beejays shall advise the Customer if Beejays believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the Goods distort, bubble and discolour) however the Customer acknowledges that it is not always possible to identify such problems therefore the Customer agrees that Beejays shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Goods.

10. Floor and Wall Covering Installations

- 10.1 The Customer acknowledges and accept that:
- (a) floor and wall covering manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
 - (b) the installation process for floor and wall covering may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.
- 10.2 The Customer agrees to indemnify Beejays against any claims howsoever arising from the provisions in clause 10.1.

11. Customer's Responsibilities

- 11.1 It is the Customer's responsibility to:

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- (a) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between Beejays and the Customer, any additional costs will be invoiced to the Customer as an extra;
 - (b) provide a clean and clear area to enable scheduled Services to be completed and where the Goods can be stored and cut to size during the installation process;
 - (c) fully disclose any information that may affect Beejays' installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa);
 - (d) ensure the sub-floor is adequately ventilated and is structurally sound;
 - (e) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness;
 - (f) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by Beejays in this regard;
 - (g) supply power to within eight (8) metres of the project;
 - (h) inspect the installation of the Goods following the completion of the Services before the installer leaves the site or as soon as possible after the Services have been completed; and
 - (i) vacuum or clean the floor after the Services however Beejays will remove all waste products associated with the installation
- 11.2 Beejays is not insured to remove furniture or fittings and will not do so, nor is Beejays licensed to move gas or electrical appliances. Beejays hereby requests the Customer to remove any and all appliances in the installation area prior to the commencement of any Services. The Customer acknowledges and agrees that Beejays shall not be held liable for any loss, damages or costs arising due to the Customer's failure to comply with this clause.
- 12. Access**
- 12.1 The Customer shall ensure that Beejays has clear and free access to the site at all times to enable them to undertake the Services. Beejays 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 Beejays.
- 13. Location of Services**
- 13.1 Prior to Beejays commencing any work the Customer must advise Beejays of the precise location of all under floor services on the site 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, telephone cables, fibre optic cables, and any other services that may be on site.
- 13.2 Whilst Beejays will take all care to avoid damage to any services the Customer agrees to indemnify Beejays 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 13.1.
- 14. Compliance with Laws**
- 14.1 The Customer and Beejays 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.
- 14.2 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 Services; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 14.3 Where the Customer has supplied products for Beejays to complete the Services, 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 Beejays' opinion, it is believed that the materials supplied are non-conforming products and will not conform with New Zealand regulations, then Beejays shall be entitled, without prejudice, to halt the Services 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.
- 14.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 14.5 Notwithstanding clause 14.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), Beejays 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 sub-contractor for the Customer who has engaged a third party head contractor.
- 15. Title**
- 15.1 Beejays and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Beejays all amounts owing to Beejays; and
 - (b) the Customer has met all of its other obligations to Beejays.
- 15.2 Receipt by Beejays 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.
- 15.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 15.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Beejays on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Beejays and must pay to Beejays the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) 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 Beejays and must pay or deliver the proceeds to Beejays on demand;

- (d) 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 Beejays and must sell, dispose of or return the resulting product to Beejays as it so directs;
- (e) the Customer irrevocably authorises Beejays to enter any premises where Beejays believes the Goods are kept and recover possession of the Goods;
- (f) Beejays may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) 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 Beejays; and
- (h) Beejays may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

16. Personal Property Securities Act 1999 (“PPSA”)

- 16.1 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 Beejays to the Customer, and the proceeds from such Goods as listed by Beejays to the Customer in invoices rendered from time to time.
- 16.2 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 Beejays may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Beejays 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 Beejays; and
 - (d) immediately advise Beejays of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.3 Unless otherwise agreed to in writing by Beejays, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.4 The Customer shall unconditionally ratify any actions taken by Beejays under clauses 16.1 to 16.3.
- 16.5 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of Beejays agreeing to supply the Goods, 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.
- 17.2 The Customer indemnifies Beejays from and against all Beejays' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Beejays' rights under this clause.
- 17.3 The Customer irrevocably appoints Beejays and each director of Beejays as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Customer's behalf.

18. Defects

- 18.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Beejays of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Beejays 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 fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Beejays has agreed in writing that the Customer is entitled to reject, Beejays' liability is limited to either (at Beejays' discretion) replacing the Goods or repairing the Goods.
- 18.2 Goods will not be accepted for return other than in accordance with 18.1 above, and provided that:
 - (a) Beejays has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
 - (c) Beejays will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) 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.
- 18.3 If Beejays accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 18.2(b) Beejays will reimburse the Customer's actual and reasonable costs of return Delivery.
- 18.4 Subject to clause 18.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

19. Warranty

- 19.1 Subject to the conditions of warranty set out in clause 19.2 Beejays warrants that if any defect in any workmanship provided by Beejays becomes apparent and is reported to Beejays within twelve (12) months of the date of Delivery (time being of the essence) then Beejays will either (at Beejays' sole discretion) replace or remedy the defect.
- 19.2 The conditions applicable to the warranty given by clause 19.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

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- (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 Beejays; 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 Beejays shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without Beejays' consent.
- (c) in respect of all claims Beejays shall not be liable to compensate the Customer for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Customer's claim.
- 19.3 Rubber migration (sometimes referred to as plasticiser migration) is a condition that can cause vinyl to discolour. It is caused by rubber or latex products, e.g. rubber or latex-soled slippers, shoes and rubber-backed mats, coming into contact with the vinyl over a constant period of time. It is not a manufacturing or an installation fault and therefore is not covered by any warranties.
- 19.4 For Goods not manufactured by Beejays, the warranty shall be the current warranty provided by the manufacturer of the Goods. Beejays 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.
- 20. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 20.1 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 Beejays to the Customer.
- 20.2 Beejays agrees to abide by the provisions of the Fair Trading Act ("FTA").
- 21. Intellectual Property**
- 21.1 Where Beejays has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Beejays. Under no circumstances may such designs, drawings and documents be used without the express written approval of Beejays.
- 21.2 The Customer warrants that all designs, specifications or instructions given to Beejays will not cause Beejays to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Beejays against any action taken by a third party against Beejays in respect of any such infringement.
- 21.3 The Customer agrees that Beejays may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Beejays has created for the Customer.
- 22. Default and Consequences of Default**
- 22.1 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 Beejays' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Customer owes Beejays any money the Customer shall indemnify Beejays from and against all costs and disbursements incurred by Beejays in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Beejays' collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies Beejays may have under this Contract, if a Customer has made payment to Beejays, 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 Beejays under this clause 22 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.
- 22.4 Without prejudice to Beejays' other remedies at law Beejays shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Beejays shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Beejays becomes overdue, or in Beejays' 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 Beejays;
 - (c) the Customer 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 Customer or any asset of the Customer.
- 23. Cancellation**
- 23.1 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 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.
- 23.2 If Beejays, due to reasons beyond Beejays reasonable control, is unable to deliver any Goods to the Customer, Beejays may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Beejays shall repay to the Customer any money paid by the Customer for the Goods. Beejays shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 The Customer may cancel Delivery of the Goods and/or Services 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 Services shall place the Customer in breach of this Contract.
- 23.4 Cancellation of orders for Goods 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.

24. Dispute Resolution

- 24.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

25. Privacy Policy

- 25.1 All emails, documents, images or other recorded information held or used by Beejays is “**Personal Information**” as defined and referred to in clause 25.3 and therefore considered confidential. Beejays 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 as set out in the Act. Beejays acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by Beejays that may result in serious harm to the Customer, Beejays 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.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to Beejays in respect of Cookies where the Customer utilises Beejays’ website to make enquiries. Beejays 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 Beejays when Beejays sends an email to the Customer, so Beejays may collect and review that information (“collectively Personal Information”)
- If the Customer consents to Beejays’ use of Cookies on Beejays’ website and later wishes to withdraw that consent, the Customer may manage and control Beejays’ privacy controls via the Customer’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 25.3 The Customer authorises Beejays or Beejays’ 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 Beejays from the Customer directly or obtained by Beejays 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.
- 25.4 Where the Customer is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 25.5 The Customer shall have the right to request (by e-mail) from Beejays, a copy of the Personal Information about the Customer retained by Beejays and the right to request that Beejays correct any incorrect Personal Information.
- 25.6 Beejays 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.
- 25.7 The Customer can make a privacy complaint by contacting Beejays via e-mail. Beejays 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>.

26. Service of Notices

- 26.1 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.
- 26.2 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.

27. Trusts

- 27.1 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 or as an agent for a trust (“Trust”) then whether or not Beejays may have notice of the Trust, the Customer covenants with Beejays 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 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 Beejays (Beejays 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.

28. Suspension of Services

- 28.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) Beejays 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 6.5 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 Beejays by a particular date; and
 - (iv) Beejays has given written notice to the Customer of its intention to suspend the carrying out of work under the construction Contract.
 - (b) if Beejays 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 Beejays exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Beejays 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 Beejays suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes Beejays from continuing the Services or performing or complying with Beejays' obligations under this Contract, then without prejudice to Beejays' other rights and remedies, Beejays may suspend the Services 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 Services is based. All costs and expenses incurred by Beejays as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 28.2 If pursuant to any right conferred by this Contract, Beejays suspends the Services and the default that led to that suspension continues unremedied subject to clause 23.1 for at least ten (10) working days, Beejays shall be entitled to terminate the Contract, in accordance with clause 23.

29. General

- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland, New Zealand.
- 29.3 Subject to the CGA, the liability of Beejays and the Customer under this Contract shall be limited to the Price.
- 29.4 Beejays 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.
- 29.5 The Customer cannot licence or assign without the written approval of Beejays.
- 29.6 Beejays 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 Customer agrees and understands that they have no authority to give any instruction to any of Beejays' sub-contractors without the authority of Beejays.
- 29.7 The Customer agrees that Beejays 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 Beejays to provide Goods to the Customer.
- 29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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 Beejays, following cessation of a Force Majeure.
- 29.9 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.