
Prenail Frames and Trusses Limited – 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 “PF&T” means Prenail Frames and Trusses Limited, its successors and assigns or any person acting on behalf of and with the authority of Prenail Frames and Trusses Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting PF&T to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Products” means all Products or Services supplied by PF&T to the Client at the Client’s request from time to time (where the context so permits the terms ‘Products’ or ‘Services’ 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 Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Products via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Products as agreed between PF&T and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Products.
- 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 Any advice, recommendation, information, assistance or service provided by PF&T in relation to Products or Services supplied is given in good faith, is based on PF&T’s own knowledge and experience and shall be accepted without liability on the part of PF&T and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Products or Services.
- 2.5 The Client acknowledges and accepts that:
- (a) the supply of Products on credit shall not take effect until the Client has completed a credit application with PF&T and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Products request exceeds the Clients credit limit and/or the account exceeds the payment terms, PF&T reserves the right to refuse Delivery; and
 - (c) the supply of Products for accepted orders may be subject to availability and if, for any reason, Products are not or cease to be available, PF&T reserves the right to vary the Price with alternative Products as per clause 6.2, subject to prior confirmation and agreement of both parties. PF&T also reserves the right to halt all Services until such time as PF&T and the Client agree to such changes. PF&T shall not be liable to the Client for any loss or damage the Client suffers due to PF&T exercising its rights under this clause.
- 2.6 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.
- 2.7 PF&T is entitled at any time to assign to any other person all or part of the debt owing by the Client to PF&T. In the event of the sale of PF&T business or a substantial portion thereof PF&T shall be entitled to novate these terms and conditions and all contracts created pursuant to them to the purchaser of PF&T business upon giving notice to the Client, and the Client agrees to such novation.
- 2.8 The Client accepts and acknowledges that all tags and notes on the original quotation will apply. By signing the order form, the Client agrees to those terms set in the quotation.

3. Authorised Representatives

- 3.1 The Client acknowledges that PF&T shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to PF&T, that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to PF&T for all additional costs incurred by PF&T (including PF&T’s profit margin) in providing any Services, or variation/s requested thereto by the Client’s duly authorised representative.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that PF&T 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 PF&T 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 PF&T in respect of the Product and/or Services.
- 4.2 In the event 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 PF&T; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

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5. Change in Control

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

6. Price and Payment

- 6.1 At PF&T's sole discretion the Price shall be PF&T's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 PF&T reserves the right to change the Price:
- (a) if a variation to the Products 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) if during the course of the Services, the Products are not or cease to be available from PF&T's third party suppliers, then PF&T reserves the right to provide alternative Products; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, alterations to plans or rescheduling of any part of the Products, rework of detailing, limitations to accessing the site, availability of machinery, safety considerations, inaccurate measurements provided by the Client, storage, etc.) which are only discovered on commencement of the Services; or
 - (e) in the event of increases to PF&T in the cost of labour or materials which are beyond PF&T's control.
- 6.3 Variations will be charged for on the basis of PF&T's quotation, and will be detailed in writing, and shown as variations on PF&T's invoice. The Client shall be required to respond to any variation submitted by PF&T within ten (10) working days. Failure to do so will entitle PF&T 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 PF&T's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Products being of the essence, the Price will be payable by the Client on the date/s determined by PF&T, which may be:
- (a) before Delivery of the Products;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by PF&T.
- 6.6 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, PF&T reserves the right to treat all retentions as placing the Client's account into default.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and PF&T.
- 6.8 PF&T may in its discretion allocate any payment received from the Client towards any invoice that PF&T determines and may do so at the time of receipt or at any time afterwards. On any default by the Client PF&T may re-allocate any payments previously received and allocated. In the absence of any payment allocation by PF&T, payment will be deemed to be allocated in such manner as preserves the maximum value of PF&T's Purchase Money Security Interest (as defined in the PPSA) in the Products.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PF&T nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Client is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to PF&T an amount equal to any GST PF&T must pay for any supply by PF&T under this or any other contract for the sale of the Products. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Products

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

8. Risk

- 8.1 Risk of damage to or loss of the Products passes to the Client on Delivery and the Client must insure the Products on or before Delivery.
- 8.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Client, PF&T is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by PF&T is sufficient evidence of PF&T's rights to receive the insurance proceeds without the need for any person dealing with PF&T to make further enquiries.
- 8.3 If the Client requests PF&T to leave Products outside PF&T's premises for collection or to deliver the Products to an unattended location then such Products shall be left at the Client's sole risk.
- 8.4 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst PF&T will make every effort to match sales samples to the finished Products, PF&T accepts no liability whatsoever where such samples differ to the finished Products supplied.

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- 8.5 Timber is a hygroscopic material subject to expansion and contraction, therefore PF&T will accept no responsibility for any swelling of the products as a result of rain and prolonged exposure to moisture or temperature changes.
- 8.6 The Client acknowledges that Products supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. PF&T will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.7 The Client acknowledges and accepts that no items are to be stored in or on the trusses or in or on any materials supported or fixed to the trusses that is not specified on the plans. PF&T shall not be liable for any losses, damages or costs as a result of the Client failing to comply with this clause.
- 8.8 The Client shall be required to erect trusses immediately on delivery and in accordance with the plans and instructions provided. PF&T shall not be liable for any damages, losses, claims or costs as a result of the Client's failure to comply with this clause. Where PF&T is to provide replacement of the Products, all costs shall be charged to the Client.
- 8.9 The Client acknowledges and accepts that the trusses are engineered products to precise specifications. At no time (whether part of a warranty claim or not) will the Client, the Client's authorised representatives or any other third party tradesmen cut or alter the trusses in any way without the written consent of PF&T. Any warranty shall be null and void where trusses are modified without prior written consent of PF&T.

9. Accuracy of Client's Plans and Measurements

- 9.1 PF&T shall be entitled to rely on the accuracy of any plans, specifications (including any CAD drawings) and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, PF&T accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Client gives information relating to measurements and quantities of the Products required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or PF&T places an order based on these measurements and quantities. PF&T accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

10. Access

- 10.1 The Client shall ensure that PF&T (or PF&T's nominated carrier) has clear and free access to the site at all times to enable them to deliver the Services. PF&T (or PF&T's nominated carrier) 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 PF&T (or PF&T's nominated carrier).

11. Title

- 11.1 PF&T and the Client agree that ownership of the Products shall not pass until:
- (a) the Client has paid PF&T all amounts owing to PF&T; and
 - (b) the Client has met all of its other obligations to PF&T.
- 11.2 Receipt by PF&T 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.
- 11.3 It is further agreed that until ownership of the Products passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Products and must return the Products to PF&T on request;
 - (b) the Client holds the benefit of the Client's insurance of the Products on trust for PF&T and must pay to PF&T the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Products then the Client must hold the proceeds of any such act on trust for PF&T and must pay or deliver the proceeds to PF&T on demand;
 - (d) the Client should not convert or process the Products or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of PF&T and must sell, dispose of or return the resulting product to PF&T as it so directs;
 - (e) the Client irrevocably authorises PF&T to enter any premises where PF&T believes the Products are kept and recover possession of the Products;
 - (f) PF&T may recover possession of any Products in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of PF&T;
 - (h) PF&T may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Client.

12. Personal Property Securities Act 1999 ("PPSA")

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Products and/or collateral (account) – being a monetary obligation of the Client to PF&T for Services – that have previously been supplied and that will be supplied in the future by PF&T to the Client.
- 12.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PF&T may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, PF&T for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without the prior written consent of PF&T; and

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- (d) immediately advise PF&T of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 12.3 PF&T and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by PF&T, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by PF&T under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of PF&T agreeing to supply the Products, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies PF&T from and against all PF&T's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PF&T's rights under this clause.
- 13.3 The Client irrevocably appoints PF&T and each director of PF&T as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Defects**
- 14.1 The Client shall inspect the Products on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify PF&T of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford PF&T an opportunity to inspect the Products within a reasonable time following Delivery if the Client believes the Products are defective in any way. If the Client shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which PF&T has agreed in writing that the Client is entitled to reject, PF&T's liability is limited to either (at PF&T's discretion) replacing the Products or repairing the Products.
- 14.2 Products will not be accepted for return other than in accordance with 14.1 above, and provided that:
- (a) PF&T has agreed in writing to accept the return of the Products; and
 - (b) the Products are returned at the Client's cost within seven (7) days of the Delivery date; and
 - (c) PF&T will not be liable for Products which have not been stored or used in a proper manner; and
 - (d) the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.3 PF&T will not accept the return of non-defective Products for credit.
- 14.4 Subject to clause 14.1, non-stocklist items or Products made to the Client's specifications are not acceptable for credit or return.
- 15. Warranty**
- 15.1 PF&T warrants that it will repair or replace Products which it manufactures subject to the following:
- (a) any claim is to be made in writing within seven (7) days of delivery;
 - (b) claddings and linings are as mentioned in consented plans;
 - (c) trusses are erected as per truss layout supplied to the Client;
 - (d) the Client provides PF&T all of the relevant and correct details on plans and/or written format.
 - (e) the Client advises PF&T any change which could impair the structural efficiency of a roof or wall frame and seeks advice of PF&T and follows same;
 - (f) the frames and trusses must only be tacked and no other fixings, claddings or materials applied to them.
- 15.2 For Products not manufactured by PF&T, the warranty shall be the current warranty provided by the manufacturer of the Products. PF&T 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 Products.
- 16. Consumer Guarantees Act 1993**
- 16.1 If the Client is acquiring Products for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Products by PF&T to the Client.
- 17. Intellectual Property**
- 17.1 Where PF&T has designed, drawn or developed Products for the Client, then the copyright in any designs and drawings and documents shall remain the property of PF&T. Under no circumstances may such designs, drawings and documents be used without the express written approval of PF&T.
- 17.2 The Client warrants that all designs, specifications or instructions given to PF&T will not cause PF&T to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify PF&T against any action taken by a third party against PF&T in respect of any such infringement.
- 17.3 The Client agrees that PF&T may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Products which PF&T has created for the Client.
- 18. Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at PF&T's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 18.2 If the Client owes PF&T any money the Client shall indemnify PF&T from and against all costs and disbursements incurred by PF&T in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PF&T's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies PF&T may have under this Contract, if a Client has made payment to PF&T, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by PF&T under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to PF&T's other remedies at law PF&T shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PF&T shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to PF&T becomes overdue, or in PF&T's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by PF&T;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other rights or remedies PF&T may have, if at any time the Client 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 Client of such notice/s) then PF&T may suspend the Services immediately. PF&T will not be liable to the Client for any loss or damage the Client suffers because PF&T has exercised its rights under this clause.
- 19.2 PF&T may cancel any contract to which these terms and conditions apply or cancel Delivery of Products at any time before the Products are delivered by giving written notice to the Client. On giving such notice PF&T shall repay to the Client any money paid by the Client for the Products. PF&T shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels Delivery of Products the Client shall be liable for any and all loss incurred (whether direct or indirect) by PF&T as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by PF&T is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. PF&T 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"). PF&T acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by PF&T that may result in serious harm to the Client, PF&T will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to PF&T in respect of Cookies where transactions for purchases/orders transpire directly from PF&T's website. PF&T agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to PF&T when PF&T sends an email to the Client, so PF&T may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via PF&T's website.
- 20.3 The Client authorises PF&T or PF&T's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by PF&T from the Client directly or obtained by PF&T from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.5 The Client shall have the right to request PF&T for a copy of the Personal Information about the Client retained by PF&T and the right to request PF&T to correct any incorrect Personal Information about the Client held by PF&T.

21. Suspension of Services

- 21.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) PF&T has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or

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- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to PF&T by a particular date; and
 - (iv) PF&T has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if PF&T suspends work, it:
- (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if PF&T exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to PF&T under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of PF&T suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes PF&T from continuing the Services or performing or complying with PF&T's obligations under this Contract, then without prejudice to PF&T's other rights and remedies, PF&T may suspend the Services immediately after serving on the Client 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 PF&T as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 21.2 If pursuant to any right conferred by this Contract, PF&T suspends the Services and the default that led to that suspension continues unremedied subject to clause 19.1 for at least ten (10) working days, PF&T shall be entitled to terminate the Contract, in accordance with clause 19.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

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

24. General

- 24.1 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).
- 24.2 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.
- 24.3 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 New Zealand.
- 24.4 PF&T shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PF&T of these terms and conditions (alternatively PF&T's liability shall be limited to damages which under no circumstances shall exceed the Price of the Products).
- 24.5 PF&T may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 24.6 The Client cannot licence or assign without the written approval of PF&T.
- 24.7 PF&T may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of PF&T's sub-contractors without the authority of PF&T.

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- 24.8 The Client agrees that PF&T may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for PF&T to provide Products to the Client.
- 24.9 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.
- 24.10 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.