

Prenail Frames and Trusses Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Client" means the person, entities or any person acting on behalf of and with the authority of the Client requesting PF&T to supply the Products as specified in any proposal, quotation, order, invoice or other documentation; and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.2 "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.
- 1.3 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemented to this Contract.
- 1.4 "Service" means any 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.
- 1.5 "PF&T" means Prenail Frames and Trusses Limited, its successors and assigns.
- 1.6 "PPSA" means the Personal Property Securities Act 1999.
- 1.7 "GST" means the goods and services tax 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.
- 1.8 "Proceeds" has the meaning given in the PPSA.
- 1.9 "Products" means all products supplied by PF&T to the Client at the Client's request from time to time, together with any Services forming part of the supply of the Products.
- 1.10 "Purchase Money Security Interest" has the meaning given in the PPSA.
- 1.11 "Services" means any services performed by PF&T as part of supplying the Products or otherwise as requested by the Client.

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 quotation 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 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 requested exceeds the Client's 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 Products and/or 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 made in or under 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's 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 goods 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 Products and/or Services, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely responsible to PF&T for all additional costs incurred by PF&T (including PF&T's profit margin) in providing any Products and/or Services, or variations requested thereto by the Client's duly authorised representative.
- 3.2 The Client acknowledges and accepts that PF&T shall, without prejudice, accept no liability in respect of any alleged or actual error(s) 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/furnished from any literature (hard copy and/or electronic) supplied by PF&T in respect of the Product and/or Services.
- 3.3 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 willful misconduct of PF&T, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

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) 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/furnished 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 willful misconduct of PF&T, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. 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, 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.
- 5.2 **Price and Payment**
 - (a) 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.
 - (b) PF&T reserves the right to change the Price:
 - (i) if a variation to the Products which are to be supplied is requested; or
 - (ii) if a variation to the Services originally scheduled (including any applicable prices or specifications) is requested; or
 - (iii) if a variation to the Services is requested by the Client.
 - (c) 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 unidentified 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.
- 5.3 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 deemed to have accepted 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.
- 5.4 At PF&T's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Products being of the essence, the Price will be payable by the Client on the terms 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.
- 5.6 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 in default.
- 5.7 Payment may be made by cash, cheque, bank cheque, electronic/in-line banking, or by any other method as agreed between the Client and PF&T.
- 5.8 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 in the Products.

- 5.9 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 of that invoice is in dispute unless the request for payment by the Client is a claim made under the Construction Contracts Act 2002.
- 5.10 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.
- 5.11 **Delivery of Products**
 - (a) Delivery ("Delivery") of the Products is taken to occur at the time that:
 - (i) the Client or the Client's nominated carrier takes possession of the Products at PF&T's address; or
 - (ii) 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.
 - (b) At PF&T's sole discretion the cost of Delivery is in addition to the Price.
 - (c) 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.
 - (d) PF&T may deliver the Products in separate instalments, which shall each be treated as a separate contract subject to these terms and conditions. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.12 **Risk**
 - (a) 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.
 - (b) If any of the Products are damaged or destroyed following Delivery but prior to collection, the Client shall be responsible for the loss and 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.
 - (c) 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 will be left at the Client's sole risk.
 - (d) Timber and prolonged exposure to such things 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.
 - (e) 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 such things 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.
 - (f) 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 such things 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.
- 5.13 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.
- 5.14 The Client acknowledges and accepts that no items are to be stored in or on the Products, or in or on or at 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.
- 5.15 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.
- 5.16 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.

6. Accuracy of Plans and Measurements

- 6.1 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.
- 6.2 In the event that 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.

7. Access

- 7.1 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 Products. 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).
- 7.2 **Title**
 - (a) The Client and the Client agree that ownership of the Products shall not pass until:
 - (i) the Client has paid PF&T all amounts owing to PF&T; and
 - (ii) the Client has met all of its other obligations to PF&T.
 - (b) 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.
 - (c) It is further agreed that until ownership of the Products passes to the Client in accordance with clause 11.1:
 - (i) the Client is not to be a bailee of the Products and must return the Products to PF&T on request;
 - (ii) 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;
 - (iii) 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. The Client irrevocably authorises PF&T to enter any premises where PF&T believes the Products are kept and recover possession of the Products;
 - (iv) PF&T may recover possession of any Products in transit whether or not Delivery has occurred;
 - (v) 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;
 - (vi) PF&T may commence proceedings to recover the Price of the Products sold owing by the Client to PF&T if ownership of the Products has not passed to the Client.

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

- 8.1 As security for all of the Client's obligations under these terms and conditions (including for payment of any money owing to PF&T), the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA;
 - (b) the Client grants a security interest in all the Products, together with the Proceeds of such Products, that PF&T agrees to sell to the Client under any contract; and
 - (c) the Client grants a security interest in all of the Client's present and after acquired personal property (as defined in the PPSA).
- 8.2 The security interests granted under this clause shall continue until all sums owing by the Client to PF&T for Products supplied have been paid in full.
- 8.3 The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PF&T may reasonably require to register a financing statement or financing charge 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 charge 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 charge 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

- (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 rescind or vary the statement in accordance with section 132 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.

9. Real Property Security and Charge

- 9.1 To secure the Client's obligations under these terms and conditions (including for payment of any money owing to PF&T), the Client agrees that PF&T shall have the right, at its absolute discretion and upon written request to the Client:
 - (a) to require the Client to demand to complete and register a mortgage (in the form of the then current The Law Association (ADLS) all obligations mortgage) over any interest in any property owned or held by the Client (whether a beneficial or legal interest and as trustee or otherwise); and
 - (b) to lodge a caveat against the title to any property in respect of which the Client is or may be interested (whether a beneficial or legal interest and as trustee or otherwise).
- 9.2 To further secure the Client's obligations under these terms and conditions (including for payment of any money owing to PF&T), the Client irrevocably appoints PF&T as the attorney of the Client for the purpose of PF&T exercising its rights under this clause whilst any of the Client's obligations remain outstanding. The Client holds an interest in property as trustee, then for the purposes of this clause, the Client warrants that it has the authority of any co-trustee (if any) to grant PF&T the rights arising under this clause and such grant is authorised by the relevant trust deed.

10. Defects

- 10.1 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, damage in quantity, damage or failure to comply with the description or quote. The Client shall have 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.
- 10.2 PF&T shall 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.
- 10.3 PF&T will not accept the return of non-defective Products for credit.
- 10.4 Subject to clause 14.1, non-stockist items or Products made to the Client's specifications are not acceptable for credit or return.

11. Warranty and Limitation of Liability

- 11.1 The Client agrees to repair or replace defective 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 written forms;
 - (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 taken and no other fixings, claddings or materials applied to them; and
 - (g) the frames and trusses must have been stored in a proper manner.
- 11.2 For Products that the Client is entitled to reject in accordance with this clause 15, PF&T's liability is limited to either (at PF&T's discretion) repairing or replacing the Products.
- 11.3 Except for the warranties expressly set out in this clause 15, but subject to clause 16.1, to the maximum extent permitted by law PF&T expressly excludes all other warranties, conditions and representations, conditions as to fitness or suitability or fitness for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise.
- 11.4 Notwithstanding any other provision of these terms and conditions, other than clause 16.1, under no circumstances, shall PF&T be liable to the Client or any other person (whether in contract, tort, including negligence, statute or otherwise) for any loss of profits;
- 11.5 consequential loss or damage;
- 11.6 indirect loss or damage; or
- 11.7 special loss or damage of any kind.
- 11.8 To the maximum extent permitted by law, but subject to clause 16.1, PF&T's total liability (whether in contract, statute, tort, including negligence, or otherwise however arising) for claims by the Client, or any other person, relating to or arising from the supply of Products or any quotation or estimate given shall not exceed the price of the Products to which the claim relates.

12. Consumer Guarantees Act 1993

- 12.1 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. Nothing in these terms and conditions is intended to derogate from the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by that Act.
- 12.2 **Intellectual Property**
 - (a) 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.
 - (b) The Client warrants that all designs, specifications or instructions given to PF&T will be original and that PF&T will not 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.
- 12.3 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.

13. Default and Consequences of Default

- 13.1 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.
- 13.2 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 owing by the Client to PF&T, including but not limited to a solicitor and a solicitor and own client basis, PF&T's collection agency costs, and bank disbursement fees.
- 13.3 Further to any other rights or remedies PF&T may have under this Contract, if the 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.
- 13.4 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.

14. Cancellation

- 14.1 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.
- 14.2 PF&T may cancel any contract to which these terms and conditions apply or cancel Delivery of the Product 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.
- 14.3 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).
- 14.4 Cancellation of orders for Products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 14.5 **Privacy**
 - (a) PF&T may collect, use and disclose personal information that identifies the Client or the Client's representatives (the "Client's Personal Information") in accordance with this clause and the Privacy Act 2020.
 - (b) PF&T may use the services of credit reporting and debt collection agencies on an on-going basis, and may exchange the Client's Personal Information with those agencies (including information about default and repayment history). Those agencies may retain the Client's Personal Information and provide that information to other customers who use their services.
 - (c) PF&T may use the Client's Personal Information for direct marketing purposes (including by email and other electronic means), unless the Client notifies PF&T that it does not wish to receive direct marketing from PF&T.
 - (d) The Client provides PF&T with a personal information about a third party (such as a guarantor) or authorises PF&T to collect that information, the Client confirms that it is authorised by the individual concerned to provide their personal information to PF&T and/or authorise the collection of information about them and that it has informed the individual of their rights to access and request correction of their personal information.
 - (e) The Client shall have the right to request PF&T for a copy of the Client's Personal Information about the Client obtained by PF&T and the right to request PF&T to correct any incorrect Personal Information about the Client held by PF&T. If the Client does not wish to allow Cookies to operate in the background when using 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 using the website.
- 14.6 **Suspension of Services**
 - (a) If the Client is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
 - (i) 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
 - (ii) 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
 - (iii) a scheduled amount of payment is not paid in full by the due date for its payment; or
 - (iv) 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
 - (v) 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 under this provision:
 - (i) it is not in breach of the Contract; and
 - (ii) it 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) it 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 subject Contract at any time if 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) entitle the Client to suspend work if the Client has not otherwise been available to the Client under that Act as a direct consequence of PF&T suspending work under this provision;
 - (iii) 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 supply of the Products immediately upon the giving of the written notice specifying the payment default; and
 - (iv) 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.
- 14.7 Pursuant to any right conferred by this Contract, PF&T suspends the supply of the Products and the default that led to that suspension continues un-remedied subject to clause 16.1 for at least seven (10) working days. PF&T shall be entitled to terminate the Contract, in accordance with clause 19.

15. Service of Notices

- 15.1 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; or
 - (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.
- 15.2 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.
- 15.3 **Trusts**
 - (a) The Client at any time upon or subsequent to entering into 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:
 - (i) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (ii) 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;
 - (iii) 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.

16. General

- 16.1 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.
- 16.2 PF&T may licence, assign or novate all or any part of its rights and/or obligations under this Contract without the Client's consent, provided, in the case of obligations, the novation is for genuine reasons.
- 16.3 The Client cannot assign or novate without the written approval of PF&T.
- 16.4 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 grant any instruction to any of PF&T's sub-contractors without the authority of PF&T.
- 16.5 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 after the date of notification.
- 16.6 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.
- 16.7 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.
- 16.8 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.

Please note a larger print version of these terms and conditions is available from PF&T on request