

1. Definitions

- 1.1 “**AML**” means Australasia Moulding Limited, its successors and assigns or any person acting on behalf of and with the authority of Australasia Moulding Limited.
- 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 AML’s 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 AML 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 AML 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 AML and the Customer in accordance with clause 5 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 AML 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, AML reserves the right to refuse Delivery.
- 2.6 Goods are supplied by AML only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.7 AML shall retain the right to accept any order placed by the Customer in full or partially. Where AML is unable to supply the Goods ordered, AML shall refund to the Customer any monies paid less any non-refundable deposit.
- 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. Errors and Omissions

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

4. Change in Control

- 4.1 The Customer shall give AML 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 AML as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At AML’s sole discretion the Price shall be either:
(a) as indicated on any invoice provided by AML to the Customer; or
(b) the Price as at the date of Delivery of the Goods according to AML’s current price list; or
(c) AML’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 AML reserves the right to change the Price if a variation to AML’s quotation is requested. Any variation from the plan of scheduled Services (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as changes to specifications or Goods to be supplied, stock availability or as a result of any increase to AML in the cost of Goods (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight

Australasia Moulding Limited – Terms & Conditions of Trade

and insurance charges) and labour) will be charged for on the basis of AML's quotation and will be detailed in writing, and shown as variations on AML's invoice. The Customer shall be required to respond to any variation submitted by AML within ten (10) working days. Failure to do so will entitle AML 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.

- 5.3 AML reserves the right to change the Price where a bulk discount (quantity pricing) has been offered by AML, and the Customer subsequently reduces the quantity of Goods ordered.
- 5.4 At AML's sole discretion a reasonable non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by AML, which may be:
- (a) on Delivery of the Goods;
 - (b) before Delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with AML's payment schedule;
 - (d) 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;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by AML.
- 5.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and AML.
- 5.7 AML may in its discretion allocate any payment received from the Customer towards any invoice that AML determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer AML may re-allocate any payments previously received and allocated. In the absence of any payment allocation by AML, payment will be deemed to be allocated in such manner as preserves the maximum value of AML's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by AML nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by AML is a claim made under the Construction Contracts Act 2002. Nothing in this clause 5.8 prevents the Customer from the ability to dispute any invoice.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to AML an amount equal to any GST AML must pay for any supply by AML 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.

6. Delivery of Goods

- 6.1 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 AML's address; or
 - (b) AML (or AML's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.

7. Risk

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, AML is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AML is sufficient evidence of AML's rights to receive the insurance proceeds without the need for any person dealing with AML to make further enquiries.
- 7.3 If the Customer requests AML to leave Goods outside AML's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

8. Specifications

- 8.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in AML's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by AML.

9. Access

- 9.1 The Customer shall ensure that AML has clear and free access to the delivery site at all times to enable them to deliver the Goods. AML 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 AML.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other lifting equipment as may be deemed necessary by AML.
- 9.3 The Customer will make all necessary arrangements to take Delivery wherever the Goods and/or Services are tendered for Delivery and **will be responsible for unloading the Goods from the Delivery vehicle at its own costs**. If the Customer is unable to take Delivery at the time of Delivery, or otherwise requests AML to delay Delivery, the Customer will pay to AML any reasonable costs incurred by AML in relation to the storage and redelivery of the Goods and or Services.

10. Compliance with Laws

- 10.1 The Customer and AML 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.

Australasia Moulding Limited – Terms & Conditions of Trade

- 10.2 The Customer agrees that the site will comply with any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.
- 11. Title**
- 11.1 AML and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid AML all amounts owing to AML; and
 - (b) the Customer has met all of its other obligations to AML.
- 11.2 Receipt by AML 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 Goods passes to the Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to AML on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for AML and must pay to AML 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 AML and must pay or deliver the proceeds to AML 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 AML and must sell, dispose of or return the resulting product to AML as it so directs;
 - (e) the Customer irrevocably authorises AML to enter any premises where AML believes the Goods are kept and recover possession of the Goods;
 - (f) AML 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 AML; and
 - (h) AML may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 12. Personal Property Securities Act 1999 (“PPSA”)**
- 12.1 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 AML to the Customer, and the proceeds from such Goods as listed by AML to the Customer in invoices rendered from time to time.
- 12.2 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 AML may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, AML 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 AML; and
 - (d) immediately advise AML 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.
- 12.3 Unless otherwise agreed to in writing by AML, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.4 The Customer shall unconditionally ratify any actions taken by AML under clauses 12.1 to 12.3.
- 12.5 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 AML 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.
- 13.2 The Customer indemnifies AML from and against all AML's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AML's rights under this clause.
- 14. Defects**
- 14.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify AML of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford AML 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 shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which AML has agreed in writing that the Customer is entitled to reject, AML's liability is limited to either (at AML's discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above, and provided that:
- (a) AML 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

Australasia Moulding Limited – Terms & Conditions of Trade

- (c) AML 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.
- 14.3 If AML accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 14.2(b) AML will reimburse the Customer's actual and reasonable costs of return Delivery.
- 14.4 AML may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 14.5 Subject to clause 14.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.
- 15. Warranty**
- 15.1 Subject to the conditions of warranty set out in clause 15.2 AML warrants that if any defect in any workmanship of AML becomes apparent and is reported to AML within one (1) calendar month of the date of Delivery (time being of the essence) then AML will either (at AML's sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by AML; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods 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 AML shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without AML's consent.
 - (c) in respect of all claims AML shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.3 For Goods not manufactured by AML, the warranty shall be the current warranty provided by the manufacturer of the Goods. AML 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.
- 16. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 16.1 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 AML to the Customer.
- 16.2 AML agrees to abide by the provisions of the Fair Trading Act ("FTA").
- 17. Intellectual Property**
- 17.1 Where AML has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of AML. Under no circumstances may such designs, drawings and documents be used without the express written approval of AML.
- 17.2 The Customer warrants that all designs, specifications or instructions given to AML will not cause AML to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify AML against any action taken by a third party against AML in respect of any such infringement.
- 17.3 The Customer agrees that AML may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which AML has created for the Customer.
- 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 AML's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes AML any money the Customer shall indemnify AML from and against all costs and disbursements incurred by AML in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AML's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies AML may have under this Contract, if a Customer has made payment to AML, 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 AML under this clause 18 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.
- 18.4 Without prejudice to AML's other remedies at law AML shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to AML shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to AML becomes overdue, or in AML's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by AML;
 - (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.

19. Cancellation

- 19.1 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.
- 19.2 If AML, due to reasons beyond AML's reasonable control, is unable to deliver any Goods to the Customer, AML 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 AML shall repay to the Customer any money paid by the Customer for the Goods. AML shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 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.
- 19.4 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.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by AML is "**Personal Information**" as defined and referred to in clause 20.3 and therefore considered confidential. AML 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. AML acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by AML that may result in serious harm to the Customer, AML 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to AML in respect of Cookies where the Customer utilises AML's website to make enquiries. AML 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 AML when AML sends an email to the Customer, so AML may collect and review that information ("collectively Personal Information")
- If the Customer consents to AML's use of Cookies on AML's website and later wishes to withdraw that consent, the Customer may manage and control AML's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Customer authorises AML or AML's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by AML from the Customer directly or obtained by AML 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.
- 20.4 Where the Customer is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 20.5 The Customer shall have the right to request (by e-mail) from AML, a copy of the Personal Information about the Customer retained by AML and the right to request that AML correct any incorrect Personal Information.
- 20.6 AML 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.
- 20.7 The Customer can make a privacy complaint by contacting AML via e-mail. AML 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>.

21. Service of Notices

- 21.1 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.
- 21.2 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.

22. Trusts

- 22.1 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 AML may have notice of the Trust, the Customer covenants with AML as follows:

Australasia Moulding Limited – Terms & Conditions of Trade

- (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 AML (AML 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.

23. Suspension of Services

- 23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) AML 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 5.5 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 AML by a particular date; and
 - (iv) AML has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if AML 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 AML exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to AML 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 AML suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes AML from continuing the Services or performing or complying with AML's obligations under this Contract, then without prejudice to AML's other rights and remedies, AML 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 AML as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, AML 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, AML shall be entitled to terminate the Contract, in accordance with clause 19.

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 section 26 of 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 Except to the extent permitted by law "CGA", the liability of AML and the Customer under this Contract shall be limited to the Price.
- 24.5 AML 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.
- 24.6 The Customer cannot licence or assign without the written approval of AML.
- 24.7 AML 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 AML's sub-contractors without the authority of AML.
- 24.8 The Customer agrees that AML 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 AML to provide Goods to the Customer.
- 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, 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

Australasia Moulding Limited – Terms & Conditions of Trade

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 AML, following cessation of a Force Majeure.

- 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.