

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Seller', 'we' or 'us' shall mean Specialised Transport (2011) Limited and associated incorporations; Rockshop Quarry Products (2022) Limited; Rockshop Quarry Products (Pukekohe) Limited; and the Rockshop Quarry Products (Patetonga) Limited (our successors and assigns), or any person acting on behalf of Specialised Transport (2011) Limited and associated incorporations with written authority.
- 1.3. 'Client', 'you', or 'your' means the Client purchasing Goods or Services from us or any person acting on your behalf (including authorised agents).
- 1.4. 'Services' means all Services provided to you, including any provision of Goods as specified in any documentation or otherwise provided to you by us under this Agreement.
- 1.5. 'Goods' means all Goods required to complete the Services (including the provision of aggregate and rock).
- 1.6. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.7. 'Agreement' means these terms and conditions, as may be amended from time to time (including our privacy policy and any orders, purchases, or schedules, as applicable).
- 1.8. 'Amounts Owing' means any amount you owe to us from time to time, including the Price, any of your liability under this Agreement, any interest payable, and any enforcement expenses we incur in seeking payment of any Amounts Owing.
- 1.9. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.10. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Goods or Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party before the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.11. 'Event of Default' means failure to comply with this Agreement (including your obligations in clause 6).
- 1.12. 'Insolvency Event' means an event of insolvency or bankruptcy, including:
 - (a) the appointment of an insolvency administrator, manager, receiver or liquidator;
 - (b) any action related to winding up or making a material arrangement in relation to creditors;
 - (c) applying for any type of protection against creditors;
 - (d) being unable to pay your debts as they fall due; or
 - (e) taking or suffering any similar or analogous action in any jurisdiction due to debt.
- 1.13. 'Cleanfill' means the permitted activity under Rule 5.5.48(a) of the Auckland Council Regional Plan: Air, Land and Water (ALW Plan), subject to the conditions of 'A Guide to the Management of Cleanfills Ministry for the Environment (2002)' and defined in the ALW Plan as material that when buried will have no adverse effect on people or the environment and includes virgin materials such as clay, soil and rock, and other inert materials such as concrete or brick that are free of:
 - (a) combustible, putrescible, degradable or leachable components;
 - (b) hazardous substances;
 - (c) products or materials derived from hazardous waste treatment, hazardous waste stabilisation or hazardous waste disposal practices;
 - (d) materials that may present a risk to human health; and
 - (e) liquid waste.
- 1.14. 'Cleanfill Limits' means the acceptance limits for clean fill tipping as set out in our Cleanfill waste acceptance declaration form.
- 1.15. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.16. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.17. 'PPSA' means the Personal Property Securities Act 1999.
- 1.18. 'CCA' means the Construction Contracts Act 2002.
- 1.19. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.20. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.
- 1.21. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. All orders are subject to our acceptance. We may (at our sole discretion) accept any order in whole or part by issuing an invoice for the applicable Services, delivering the Goods or Services or otherwise confirming the order in writing.
- 3.2. You acknowledge and accept that:
 - (a) the supply of Goods on credit may not take effect until you have completed a credit application with us and it has been approved with a credit limit established for the account;
 - (b) if the supply of Goods requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
 - (c) this Agreement may only be amended with our written consent and shall supersede any other document or agreement between the parties; and
 - (d) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation.
- 3.3. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Goods or Services.
- 3.4. Your acceptance of this Agreement shall continue to all future orders, purchases, or schedules (as applicable). This Agreement will be or is deemed to be incorporated into and form part of each order, purchase, or schedule as if it were set out or implied therein in full.
- 3.5. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided they have complied with sections in Part 4, subpart 3, and all other relevant sections in Part 4 of the CCLA.
- 3.6. Once you have accepted the quote, you are not entitled to have any part of the Services carried out by any third party (unless we agree in writing).
- 3.7. Any instructions we receive from you (either oral or in writing) for the provision of the Goods or Services shall be binding under this Agreement.

4. AUTHORISED AGENTS

- 4.1. We are not obligated to inquire about the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name or any other changes to your details (including changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. You acknowledge and accept that if you fail to comply with clause 5.1, you will breach this Agreement and shall be liable for any expense or loss of profit suffered (including any Related Company).

6. PRICE AND PAYMENT

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. Unless otherwise agreed by us in writing, the Price shall be:
 - (a) indicated on invoices provided to you in respect of the Services; or
 - (b) our quoted Price, which will be binding, subject to your acceptance of our quotation in writing within thirty (30) days.
- 6.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Goods or Services will be at our standard rate according to our current Price list or at a rate we notify you of.
- 6.4. Where you receive a volume-based discount on Goods and fail to purchase the total volume of such Goods, we reserve the right to withdraw the discount and charge you the full price of the Goods without applying the discount.
- 6.5. You agree to pay the Price by the due date we determine and advise to you (at our sole discretion), which may be:
 - (a) on delivery of the Goods or completion of the Services;
 - (b) twenty (20) days following the end of the month in which a statement or invoice is sent to you; or
 - (c) seven (7) days following the date of any invoice sent to your email or postal address if there is no notice to the contrary.
- 6.6. We may submit payment claims under the CCA. A payment schedule must be provided to us within twenty (20) working days from receipt of our payment claim (and if you wish to dispute the amount of any payment claim, you must do so in accordance with Part 2, subpart 3 of the CCA).
- 6.7. At our sole discretion, we may allocate any payment from you towards any invoice that we determine and may do so at the time of receipt or any time afterwards. We may re-allocate any previously received and allocated payments if an Event of Default occurs. In the absence of any payment allocation, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests (as defined in the PPSA) in the Goods or Services.
- 6.8. We reserve the right to alter any price lists at any time. Any alterations to any Price list will be effective from the date specified by us and apply to all orders or purchases we accept on or after that date.
- 6.9. Payment may be made by cash, online banking, or any other method we agree to in writing.

- 6.10. Payment in any form other than cash shall not be taken to be payment for the Amounts Owing, and all ownership rights of the Goods or Services remain with us until that form of payment has been cleared and received in accordance with clause 17.1.
- 6.11. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing.
- 6.12. You shall pay all freight and cartage charges, including any additional costs or expenses incurred by us in delivering the Goods to the address you requested (including charges for waiting time, unloading equipment, labour, or delivery outside of regular business hours).
- 6.13. Unless otherwise agreed between the parties, we will supply the Goods or perform the Services during regular working hours. Any costs attributable to us being required by you to work outside such hours shall be payable by you.
- 6.14. You shall not withhold payment of any Amounts Owing because part of the Services are disputed, and if part of the Services are disputed, you agree that you will:
- perform all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
 - provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.
- 6.15. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.
- 7. VARIATIONS**
- 7.1. The Price will be adjusted to reflect any extra cost or expense we incur due to any instruction received from you (or your authorised agent) or any action or inaction on your part.
- 7.2. We reserve the right to change the quoted Price if:
- there is any change to the Services, including: (i) any information you provide is inaccurate; (ii) there is an increase or decrease in the quantity of the Services; (iii) you request any change to plans or specifications; (iv) there is a change in the character or quality of any Goods or the Services; (v) there are changes to the level, line, position, or dimensions of the Services; or (vi) there is any changes to the timing or sequencing of the Services;
 - additional Services are required due to: (i) the discovery of hidden or unidentifiable difficulties which are only discovered on the commencement of the Services; (ii) poor weather conditions affecting the Services; (iii) limitations to accessing the Worksite (including if heavy machinery or trucks are unable to access the Worksite or if access issues require us to transport the Goods manually); (iv) any incorrect measurements, plans or specifications you provide; or (v) health and safety considerations; or
 - the cost of labour or Goods increases due to changes beyond our control, including: (i) economic factors such as inflation or supply shortages; (ii) any taxes imposed by any Regulator; (iii) overseas transactions that may increase due to variations in foreign currency rates of exchange; or (iv) or international freight and insurance charges.
- 7.3. We will provide written notice where a variation must be completed, and you may not arbitrarily withhold agreement to undertake that variation.
- 7.4. In addition to any Price adjustment for variations, we shall be entitled to charge for our time and expenses in assessing and pricing any variation (whether or not the variation goes ahead). You shall pay a reasonable additional fee based on our regular hourly rate and expenses (including where you request us to take any steps in preparation for a variation that, for any reason, does not proceed).
- 7.5. If a territorial authority requires a variation (including as a condition of granting or retaining a building consent or for any part of the Services to comply with the building code), both parties must communicate regarding the variation requirement. You agree to advise us whether you wish the variation to be carried out or whether an alternative arrangement can be made to avoid the need for the variation.
- 7.6. Where you request us to estimate the quantity of the Goods to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the estimate and the actual quantities provided, and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.
- 7.7. Without our written consent, you must not negotiate any variations directly with our subcontractors or merchants.
- 8. DELIVERY**
- 8.1. We will deliver the Goods or Services to the delivery location that we each agree to in writing. If the delivery location is at your premises (subject to clause 24), you will provide us and our Personnel with suitable access to the premises and any amenities reasonably required by us or our Personnel to perform delivery of the Goods or Services.
- 8.2. Delivery of the Goods is taken to occur at the time that:
- you (or your nominated) carrier takes possession of the Goods at our address; or
 - we (or our nominated carrier) deliver the Goods to your nominated address even if you are not present at the address.
- 8.3. Where we deliver the Goods, you must:
- ensure we have all-weather access to the site to enable us to deliver the Goods safely;
 - obtain all necessary consents from the relevant local authority and inform us of all matters relating to such consents;
 - locate, mark and advise us of all pipes, cabling and other utilities that are on, near, or adjacent to the delivery point and of any actual or possible hazard on the land where Goods are to be delivered; and
- indemnify us against any costs, claims and damages incurred in delivering the Goods, including any cleaning, repair, damage to the site or delivery equipment and returning the delivery vehicle to the road, provided we have acted with reasonable care and skill.
- 8.4. Our final decision on entry onto any site will be at our sole discretion. Failure to deliver any Goods will not be deemed a breach of this Agreement by us.
- 8.5. We shall not be liable for any delay caused by:
- variations or additional work;
 - any other delays for which you are responsible (including delays caused by third parties you have engaged);
 - a failure or delay on your part in complying with your obligations under this Agreement, including (i) paying the deposit; (ii) providing proof of finance or insurance; or (iv) obtaining consents;
 - delays on the part of a consenting authority or other Regulator;
 - weather conditions affecting the Services completion;
 - suspensions of the Services by either party;
 - unforeseen health and safety requirements;
 - if subcontractors or Goods are unavailable;
 - any matter covered in clause 33.8 of this Agreement;
 - dispute resolution procedures invoked by either party in circumstances that, in our reasonable opinion, make it impracticable to proceed as otherwise planned or legal proceedings relating to the Services, commenced or threatened by a third party in circumstances that make it impractical for us to proceed; or
 - any other matter outside our reasonable control.
- 8.6. You must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. If you are unable to take delivery of the Goods as arranged, we shall be entitled to charge a reasonable fee for redelivery (including any storage of the Goods).
- 8.7. If you refuse all or part of any order upon delivery at the site, you shall be bound to make full payment for the Goods and all disposal costs in respect of the returned Goods.
- 8.8. Any time we specify for delivery of the Goods is an estimate only, and we will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery. You cannot cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery or any delay in delivery due to any event beyond our control.
- 8.9. We may deliver the Goods in separate instalments, which will be invoiced and paid for as individual transactions under this Agreement. If you fail to pay for an instalment on the due date, we may suspend deliveries of future instalments.
- 8.10. You authorise any deviation from the intended route or method of carriage for the Goods that may be considered reasonable or necessary to complete delivery.
- 9. ERRORS AND OMISSIONS**
- 9.1. You agree that we have no liability regarding any errors or omissions:
- resulting from any unintentional mistake made in the formation or administration of this Agreement; or
 - contained in any documentation supplied to you regarding the Services.
- 9.2. If such an error or omission occurs that is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.
- 9.3. You agree to notify us as soon as reasonably possible if you become aware of any error in the documentation provided regarding the Services.
- 10. DEFECTS**
- 10.1. Any concerns about the quality or defects in the Goods should be presented to our Personnel at the time of delivery. If you do not notify us of any defects at the time of delivery, the Goods and Services shall be presumed free of defects or other issues (subject to clause 14.1).
- 10.2. You shall allow us to inspect the Goods or Services to rectify any defect within twenty-four (24) hours from the delivery date if you believe the Goods or Services are defective and shall not engage any third party to rectify any defect before we inspect the Services. If you engage a third party to rectify any defect before allowing us to inspect the Services, then we are:
- entitled to cancel this Agreement, and all Amounts Owing shall become due;
 - not be obliged to provide any information or documentation or take any other action in respect of the Services; and
 - immediately discharged from any further obligation or liability regarding the Services.
- 10.3. Any period during which the Services has been suspended (under clause 26) as a consequence of your default shall not be counted when calculating a reasonable time for rectification of any defect, and any suspension shall not be construed as a permanent abandonment of the Services.
- 10.4. A defect does not include any damage resulting from your failure to follow our reasonable instructions.
- 11. RETURNS AND WARRANTIES**
- 11.1. We will not accept the return of Goods for credit (unless agreed to in writing).
- 11.2. We may agree for you to return some of the Goods for credit by quoting the date of delivery and the despatch docket numbers or invoice number provided that:
- the Goods have not been used;
 - we may charge a handling fee excluding delivery charges; and
 - we have been notified in writing at least two hours before the delivery.
- 11.3. To the extent permitted by law, we do not give you a warranty on the quality or suitability of the Goods for any purpose, and any implied warranty is expressly excluded. We shall not be responsible for any loss or damage to the Goods or caused by the Goods (whether directly or indirectly).

12. PRIVACY ACT 2020

- 12.1. You authorise us (and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:
- exercising our rights or performing our obligations under this Agreement;
 - using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
 - monitoring your credit file with credit reporting agencies;
 - registering any Security Interest under this Agreement;
 - direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
 - the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 12.2. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information we hold. If you provide any personal information about a third party to us (including your Personnel), you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 12.3. If the Services are expected to involve sharing any data sets or other personal information, we will enter into a separate data protection agreement with you.
- 12.4. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

13. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- 13.1. Each party must keep confidential all Confidential Information, however, nothing in clause 13 prevents a party from disclosing Confidential Information:
- in the circumstances provided for in this Agreement;
 - if the disclosure is required by law or Regulator (but only to the extent necessary); or
 - if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.
- 13.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
- 13.3. You acknowledge and agree that we own:
- all right, title and interest in the Goods or Services at all times (including all intellectual property rights); and
 - any new Intellectual Property created as a result of or in connection with the provision of the Goods or Services.
- 13.4. If, notwithstanding clause 13.3, any Intellectual Property rights in any of the Goods or Services vests in you, you assign those Intellectual Property rights to us with effect from creation and agree to do all things we reasonably require to give effect to such assignment.
- 13.5. You agree that we may use at no expense any designs, drawings, plans, documents or photographs we create to market our Services or enter any competition. We will exclude your personal information, and you will not be able to be uniquely identified from the content we may use.
- 13.6. You warrant that our use of any designs, instructions, plans, specifications, or other technical information you provide will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor-client basis) that we may incur or suffer in the event of any such infringement.

14. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

- 14.1. Subject to clause 14.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under section 2 of the Consumer Guarantees Act 1993 (CGA)) under the CGA.
- 14.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
 - it is fair and reasonable for the parties to be bound by clause 14.2.
- 14.3. If you are acquiring the Goods or Services to resupply the Goods or Services in trade, you undertake that you will:
- contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and
 - procure that your clients and each person in the distribution chain thereafter contract out of the CGA to the maximum extent permitted by law in their contracts with clients.
- 14.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
 - it is fair and reasonable for the parties to be bound by clause 14.4.
- 14.5. You agree to indemnify us against any expenses or losses we incur due to your breach of clause 14.

15. CANCELLATION

- 15.1. Either party may cancel the Services provided under this Agreement if:
- any provision of this Agreement authorises cancellation in the circumstances;
 - either party have a right to cancel this Agreement under Part 2, subpart 3 of the CCLA (or any other statute); or
 - either party have permanently abandoned the Services before completion or has become incapable of complying with the obligations under this Agreement.
- 15.2. If either party cancels this Agreement, the cancellation shall take effect on the service of a notice on the other party (in accordance with clause 30.7) advising of the cancellation and the reason for the cancellation.
- 15.3. We are not obligated to accept the cancellation of the Goods, which we must agree to in writing. A failure or refusal to sign a dispatch docket shall not be evidence of rejection of any Goods or cancellation of any order, and such rejection or cancellation is to be notified in writing at least two hours before delivery.
- 15.4. If you cancel this Agreement, you agree that we are entitled to:
- charge for any reasonable loss of profit; and
 - forfeit your deposit or any amount paid in advance and apply it to any Amounts Owing without prejudice to our other rights and remedies.
- 15.5. If either party exercises the right to cancel this Agreement:
- you agree to pay for the Goods delivered and the Services performed up to the date of cancellation. If the Amounts Owing for any Goods or Services is not apparent, it shall be calculated as if the relevant Goods and Services were provided as a variation (in accordance with clause 7); and
 - we shall provide possession of the Goods to you (subject to all Amounts Owing being paid in full).
- 15.6. We shall be entitled to cancel all or part of any order which remains unperformed, and all Amounts Owing shall become immediately due if:
- any Amounts Owing become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
 - an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors, or a liquidator or similar person is appointed.
- 15.7. If we commit any of the following acts of default and we have not remedied the default within twenty (20) Business Days of receiving written notice of the default, you may cancel this Agreement, including if we:
- become insolvent or bankrupt, convene a meeting with our creditors or a liquidator or similar person is appointed in respect of our assets; or
 - persistently or wilfully neglect our obligations under this Agreement.
- 15.8. Where you cancel the Agreement, the warranty provided may be withdrawn or rendered void. To avoid rendering the warranty void, you must act in good faith and consult with us regarding the options for a resolution (including obtaining our prior written consent to the cancellation).
- 15.9. All provisions of this Agreement intended to continue in force beyond cancellation shall continue to bind the parties (in accordance with clause 30.12).
- 15.10. Subject to clause 15.9, on cancellation, each party shall be immediately discharged from any further obligation or liability regarding the Services and this Agreement (without prejudice to any right or remedy arising from either party's prior breach or unlawful act occurring before the cancellation).

16. EVENT OF DEFAULT

- 16.1. We may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount from the due date of payment until the date the outstanding amount is paid (and any interest shall compound monthly).
- 16.2. If an Event of Default occurs, you agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including any administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis).
- 16.3. We shall apply payments received first to interest, any costs incurred in debt recovery, and then to reducing principal.
- 16.4. Without prejudice to any other remedies, we may, if at any time you are in breach of any obligations under this Agreement (including those relating to payment), suspend or terminate the supply of Goods to you and any of our other obligations under this Agreement. We will not be liable to you for any loss or damage you suffer because we exercise our rights under this clause 16.4.
- 16.5. You acknowledge and agree that if you are in default, we may, at our sole discretion:
- appoint a receiver in respect of your assets to take any action necessary to fulfil your obligations (including paying all Amounts Owing); and
 - charge you any associated costs to complete this process.

17. RETENTION OF TITLE

- 17.1. Ownership (including all right, title and interest) of the Goods and Services remains with us until:
- we have received all Amounts Owing; and
 - you have performed all of your obligations under this Agreement.
- 17.2. If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Goods may be stored to remove any Goods. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses you incur, and you indemnify us against any liability we may have to any third party (including full legal costs on a solicitor-client basis), as a result of us exercising our rights under clause 19.2 (except where damages, costs or losses are due to our negligence or fraud).
- 17.3. If you resell or use any Goods before ownership of the Goods has passed to you (including combining or processing the Goods), the proceeds of such sale or use will be received and held (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).

17.4. It is further agreed that:

- (a) where possible, the Goods shall be kept separate and identifiable until we have received full payment and you have fulfilled all of your obligations under this Agreement; and
- (b) until ownership of the Goods passes to you, we may give written notice to return the Goods (or any accessories or components), and your rights to obtain ownership or any other interest in the Goods shall cease.

17.5. If any Goods are damaged where full payment has not been received, you agree that we are entitled to:

- (a) receive all insurance proceeds paid for the Goods; and
- (b) deal directly with the insurance company to receive all insurance proceeds paid for the Goods we own (in accordance with clause 17.1).

17.6. We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Goods or Services has not passed to you.

18. SECURITY AND LIEN

18.1. Subject to us providing any Goods or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien that you own either now or in the future and grant a security interest in all of your present and after-acquired property to secure the performance of all obligations under this Agreement (including full payment of all Amounts Owing).

18.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 18.1 of this Agreement (including signing any document on your behalf).

18.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 18 to secure the performance of your obligations under this Agreement.

18.4. It is fair and reasonable for the parties to be bound by clause 18.

19. PERSONAL PROPERTY SECURITIES ACT 1999

19.1. You acknowledge and agree that:

- (a) this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Goods or the Services or the proceeds of such Goods or Services; and
- (b) the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired personal property) you may owe us from time to time and at any time.

19.2. You agree that you will sign any further documentation and provide any information that we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a perfected Security Interest in the Goods or Services or a Security Interest in the proceeds of the Goods or Services (a Security Interest taken in all collateral and any proceeds of any collateral).

19.3. To the extent permitted by law, we each contract out of:

- (a) sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.

19.4. You waive your right to receive a verification statement under Part 10, section 148 of the PPSA regarding any financing statement relating to a Security Interest.

19.5. Nothing in this Agreement is to be construed as an agreement that: (i) a Security Interest in Goods (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; (ii) a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; (iii) a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and (iv) a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.

19.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.

19.7. You must provide us with information and any associated documentation we request regarding your financial status from time to time.

19.8. If we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interests as security for the Amounts Owing, and we may suspend or cancel further supply of Goods or Services until you have provided such Security Interests.

19.9. You unconditionally ratify any actions taken under clause 19.

20. WORKSITE ACCESS

20.1. You acknowledge and agree that it is your responsibility to ensure:

- (a) we have clear and free access to the Worksite to deliver the Goods or undertake the Services, and we shall not be liable for any loss or damage to the Worksite (including damage to pathways, driveways, concrete, and paved or grassed areas) unless due to our negligence; and
- (b) access is suitable to accept the weight of laden trucks or other heavy equipment as necessary.

20.2. Where access details have not been provided for unoccupied premises, you must be available to allow us access to the Worksite for delivery. If you are not available, the delivery may not take place.

20.3. You assume all liability for damages to footpaths, kerbs, drains or other property for deliveries beyond the kerb line. You are responsible for any salvage charges incurred in returning the vehicle to the roadway. You are responsible for removing any mud or clay from the delivery truck wheels and the removal of mud or clay tracked on footpaths or roads by the delivery trucks.

21. CLIENT'S RESPONSIBILITIES

21.1. You warrant that you have sufficient funds available to honour your payment obligations and will, on request, provide us with evidence verifying such funds through a letter of credit from your banking institution.

22. INSURANCE AND RISK

22.1. You acknowledge and agree that:

- (a) where we supply Goods only, all risks for the Goods shall immediately pass to you on delivery, and you must insure the Goods on or before delivery. The delivery of the Goods shall be deemed to have taken place immediately at the time that either: (i) you (or your nominated carrier) take possession of the Goods at our address; or (ii) we (or our nominated carrier) deliver the Goods to your nominated delivery address (even if you are not present at the address); or
- (b) if we are to supply and provide any other Services with the Goods, we shall maintain an insurance policy for the Services until completion, at which point all risks for the Services shall immediately pass to you.

22.2. You accept that we are only responsible for Goods or Services that are provided or replaced by us, and we do not accept any responsibility for previous Services carried out by any third party or for any loss or damage to the Goods or Services that are caused by any other third party after the completion of the Services.

22.3. You agree that colour, grain or shade variations are inherent in natural Goods. While we will make every effort to match colour, grain or shade when selecting Goods, we shall not be liable for any variation in colour, grain or shade between batches of Goods or between new Goods and existing goods (and if there is a variation between batches, the Goods and Services will not be considered to contain any defect or faulty workmanship).

22.4. You agree that Goods supplied by us may:

- (a) fade or change colour over time;
- (b) be damaged or scratched by impact;
- (c) expand or distort as a result of exposure to heat or weather conditions; or
- (d) mark or stain if exposed to certain substances (including those stated in any manufacturer's documentation).

22.5. Colour and texture variations may occur in Goods and from Samples due to:

- (a) the use of natural materials in the manufacturing process;
- (b) normal manufacturing tolerances and processes; and
- (c) weather conditions.

22.6. You agree that such variations do not constitute a defect with the Goods, and we shall not be liable for any loss or damage suffered by you as a result of such variations.

22.7. You acknowledge that you must ensure safe removal if asbestos or any other toxic substances are discovered at the Worksite. You further agree to indemnify us against any costs incurred due to such discovery. Under no circumstances will we handle removing any asbestos product unless we agree in writing.

22.8. Should you request that we leave Goods outside our premises for collection or deliver them to an unattended location, you agree that those Goods shall be left at your sole risk.

23. NOTIFICATION OF SERVICES

23.1. You must precisely locate all unseen or underground services at the Worksite and mark the same prior to us commencing any of the Services (including electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be present on the Worksite). You agree that we are in no way liable for any repair costs or fines incurred due to damage to underground services that you do not precisely locate and mark prior to the commencement of the Services.

23.2. We accept no liability for unforeseen or unmarked underground services at the Worksite. If underground services are damaged despite us taking all reasonable steps to identify the underground services present, all liability and repair costs shall be your responsibility (including the obligation to seek damages from the party who installed and failed to mark the correct location of the services). Any additional Services required due to damage to underground services will be treated as a variation (in accordance with clause 8) unless due to our negligence.

23.3. If you request us to engage a service locator or if we require this based on industry experience, we will (at your expense) seek advice on underground services from a suitably competent and certified underground service locator, which will be based on best practices, plans, drawings, and available information. You agree to indemnify us regarding all liability and repair costs resulting from damage to underground services not precisely located and marked by the certified service locator.

24. HEALTH AND SAFETY AT WORK ACT 2015

24.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act and all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.

24.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as inform us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.

24.3. Each party must consult, cooperate, and coordinate activities with all other persons with a health and safety duty in relation to the same matter of providing the Goods or Services (including in connection with the delivery of the Goods or Services).

24.4. If a Workplace does not comply with industry standards regarding safety, as we determine, our Personnel may leave the workplace without warning until all safety concerns are addressed and resolved.

25. PLANS AND SPECIFICATIONS

- 25.1. Where you supply us with plans, specifications, or other technical information, you are responsible for providing accurate information, and we are entitled to rely on it.
- 25.2. If there is any discrepancy between the drawings and the specifications, precedence will be determined based on the election of authority agreed upon by both parties and recorded in writing. If no election of authority has been made, then the drawings will take precedence, and you agree that:
- (a) figured specifications take precedence over scaled specifications;
 - (b) large-scale specifications take precedence over small-scaled specifications;
 - (c) amended drawings take precedence over older drawings; and
 - (d) all drawings and specifications are subject to any building consent.
- 25.3. The dispatch docket will set out the specifications of the Goods ordered. You are responsible for signing the docket and checking that such specifications are correct before the Goods are discharged from our delivery truck.

26. CONSTRUCTION CONTRACTS ACT 2002

- 26.1. We reserve the right to suspend the Services (in accordance with Part 2, subpart 4 of the CCA) by providing five days written notice if:
- (a) a claimed amount is not paid in full by the due date;
 - (b) if we have issued a payment claim and no payment schedule has been provided; or
 - (c) a scheduled amount is not paid in full by the due date for its payment, even though the payment schedule you provide indicates a scheduled amount that you propose to pay us.
- 26.2. If we suspend the Services, you acknowledge and agree that:
- (a) the suspension of the Services is not in breach of this Agreement;
 - (b) the rights and obligations in this Agreement shall remain in full force and effect;
 - (c) we are not liable for any loss or damage you suffer (or by any third party claiming through you);
 - (d) we are entitled to an extension of time to complete the Services;
 - (e) the suspension does not affect any rights that would otherwise have been available to us under Part 2, subpart 3 of the CCLA; and
 - (f) we may exercise any rights for payments or adjudication of disputes under Part 2 and Part 3 of the CCA.

27. CLEANFILL

- 27.1. A Cleanfill is any landfill that only accepts Cleanfill material as defined in the Auckland Council Regional Plan (ALW Plan).
- 27.2. Any materials imported onto the site must not be from a known contaminated or high-risk site such as:
- (a) a petrol station;
 - (b) a timber treatment plant;
 - (c) industrial farming operations; or
 - (d) a known contaminated site (including containing harmful coal tars).
- 27.3. Contractors delivering material that does not meet the Cleanfill Limits outlined below will be liable for any remediation and disposal costs that we incur.
- 27.4. All material presented to us for disposal must comply with the limits set out in the attached Cleanfill Limits in our Cleanfill waste acceptance declaration form. Before disposal of material at our premises, you must complete a Cleanfill waste acceptance declaration form.
- 27.5. We will reject material presented for disposal that does not comply with the limits set out in the attached Cleanfill Limits. We reserve the right to refuse any material presented for disposal.
- 27.6. Any costs associated with the disposal of material (including making good any property or premises operated by us or on our behalf) as a result of material disposed of that does not comply with the attached Cleanfill Limits will be your responsibility.
- 27.7. You must make all efforts to ensure that all information provided to us is correct and accurate and indemnify us from any loss or associated costs with removal, disposal or associated cleaning costs of any material that does not comply with our Cleanfill Limits.

28. THIRD PARTY SUPPLIERS

- 28.1. We shall be entitled to engage third party suppliers (including subcontractors), and you agree that we have your authority to enter into contracts with such third party suppliers in your name.
- 28.2. If you request and authorise us to arrange the provision of Goods or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Goods or Services to you directly by a third party supplier. You agree to pay all Amounts Owing in accordance with this Agreement if we arrange any supply of Goods or Services provided directly to you by a third party supplier.
- 28.3. No warranty is offered by us regarding the quality of the third party supplier's workmanship, including whether their recommendations are appropriate or accurate.

29. LIABILITY

- 29.1. To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement (including any unintentional misrepresentation made to you by us regarding any of the Goods or Services).
- 29.2. To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.

- 29.3. To the extent permitted by law, our total liability under or in connection with this Agreement and the Goods or Services is limited to, at our option:

- (a) in the case of Goods, any one or more of the following: (i) the replacement of the Good(s) or the supply of equivalent Good(s); (ii) the repair of the Good(s); (iii) the payment of the expense of replacing the Good(s) or of acquiring equivalent Good(s); or (iv) the payment of the expense of having the Good(s) repaired; or
 - (b) in the case of Services: (i) resupplying the Services; or (ii) the payment of the expense of having the Services resupplied.
- 29.4. If, notwithstanding clause 28, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Goods or Services; or (ii) the actual loss or damage suffered by you; and
 - (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, customers, opportunities or loss of or damage to reputation.
- 29.5. The limitations and exclusions on liability in this clause 29 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.
- 29.6. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:
- (a) for the acts or omissions of any third party;
 - (b) any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or
 - (c) to any third party.

30. GENERAL

- 30.1. Governing law: This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.
- 30.2. Entire Agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 30.3. Priority: To the extent of an inconsistency between:
- (a) this Agreement;
 - (b) all other schedules to this Agreement;
 - (c) any privacy or data agreement (if applicable); and
 - (d) the order of priority set out above will apply (with (a) having the highest priority).
- 30.4. Subcontracting: We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.
- 30.5. Assignment: You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owing by you.
- 30.6. Amendments: Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.
- 30.7. Notices: Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.
- 30.8. Force majeure: We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).
- 30.9. Severability: If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be modified, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.
- 30.10. Waiver: A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 30.11. Termination: Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.
- 30.12. Survival: Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.
- 30.13. Rights of third parties: This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 30.14. Relationship: We will provide Goods or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.

- 30.15. Non-exclusive: This Agreement is not exclusive, and you agree that there are no restrictions on us to provide any Goods or Services to any other person.
- 30.16. Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or email exchange of PDF copies), constituting one instrument.