

Quinn Engineering Ltd – Terms & Conditions of Trade

- 1.1 **Definitions**
 - 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
 - 1.2 "Customer" means the persons, entities or any person acting on behalf of and with the authority of the Customer requesting Quinn to provide Equipment or Works 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.
 - 1.3 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
 - 1.4 "Equipment" means any lifts, forklifts, buckets or any other items designed or manufactured by Quinn and sold to the Customer under these Terms.
 - 1.5 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Equipment and/or Works as agreed between Quinn and the Customer in accordance with clause 6 below.
 - 1.6 "Quinn" means Quinn Engineering Ltd, its successors and assigns or any person acting on behalf of and with the authority of Quinn Engineering Ltd.
 - 1.7 "Works" means all services supplied to the Customer by Quinn including consultation, design, manufacturing, installation, maintenance and servicing or materials supplied by Quinn to the Customer at the includes Customer's request from time to time.
 2. **Acceptance**
 - 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Equipment or Works.
 - 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 Equipment or Works on credit shall not take effect until the Customer has completed a credit application with Quinn and it has been approved with a credit limit established for the account.
 - 2.5 In the event that the supply of Works request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Quinn reserves the right to refuse delivery.
 - 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 3. **Errors and Omissions**
 - 3.1 The Customer acknowledges and accepts that Quinn 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 Quinn in the formation and/or administration of this Contract; and/or
 - (b) contained in/informed from any literature (hard copy and/or electronic) supplied by Quinn in respect of the Equipment or Works.
 - 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 willful misconduct of Quinn, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
 4. **Change in Control**
 - 4.1 The Customer shall give Quinn 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, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Quinn as a result of the Customer's failure to comply with this clause.
 5. **Authorised Representatives**
 - 5.1 Unless otherwise limited as per clause 5.2, the Customer agrees that should the Customer introduce any third party to Quinn as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Works, and/or to request any variation thereto, on the Customer's behalf (such authority to continue until all requested Works have been completed, or the Customer otherwise notifies Quinn in writing that said person is no longer the Customer's duly authorised representative).
 - 5.2 In the event that the Customer's duly authorised representative, as per clause 5.1, is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Quinn in writing of the parameters of the limited authority granted to their representative.
 - 5.3 The Customer specifically acknowledges and accepts that they will be solely liable to Quinn for all additional costs incurred by Quinn (including the contractor's profit margin) in providing any Works, or variations thereto, requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).
 6. **Price and Payment**
 - 6.1 At Quinn's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Quinn to the Customer in respect of Works performed or Equipment supplied;
 - (b) Quinn's quoted Price (subject to clause 6.2) which shall be binding upon Quinn provided that the Customer shall accept Quinn's quotation in writing within thirty (30) days.
 - 6.2 Quinn reserves the right to change the Price:
 - (a) if a variation to the Equipment or Works which are to be supplied is requested; or
 - (b) where additional unforeseen Works are required to remedy a situation; or
 - (c) in the event of increases to Quinn in the cost of labour or materials which are beyond Quinn's control.
 - 6.3 Variations will be charged for on the basis of Quinn's quotation, and will be detailed in writing, and shown as variations on Quinn's invoice.
 - 6.4 Time for payment for the Works and Equipment being of the essence, the Price will be payable by the Customer on the date determined by Quinn, which may be:
 - (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Quinn's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (c) for certain approved Customer's, 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;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Quinn.
 - 6.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Quinn.
 - 6.6 Quinn may in its discretion allocate any payment received from the Customer towards any invoice that Quinn determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Quinn may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Quinn, payment will be deemed to be allocated in such manner as preserves the maximum value of Quinn's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
 7. **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 Quinn nor to withhold payment of any invoice because part of that invoice is in dispute.**
 - 7.1 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Quinn an amount equal to any GST Quinn must pay for any supply by Quinn under this or any other agreement for the sale of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
 7. **Provision of the Works**
 - 7.1 Subject to clause 7.2 it is Quinn's responsibility to ensure that the Works start as soon as it is reasonably possible.
 - 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Quinn delays an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Quinn's control, including but not limited to any failure by the Customer to:
 - (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Quinn that the site is ready.
 - 7.3 Quinn may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 7.4 At Quinn's discretion, the cost of delivery is either included or in addition to the Price.
 - 7.5 Any time specified by Quinn for delivery of the Works is an estimate only and Quinn will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Quinn is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then Quinn shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
 8. **Risk**
 - 8.1 If Quinn retains ownership of the Equipment under clause 12 then:
 - (a) where Quinn is supplying Equipment only, all risk for the Equipment shall immediately pass to the Customer on delivery and the Customer must insure the Equipment on or before delivery. Delivery of the Equipment shall be deemed to have taken place immediately at the time that the Equipment is delivered by Quinn or Quinn's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - 8.2 The Customer acknowledges that Equipment supplied may exhibit variations in shade, colour, texture, surface and finish. Quinn will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
 - 8.3 The Customer warrants that the structure of the equipment in or upon which the Equipment is to be installed or erected is sound and will sustain the installation and work incidental thereto and Quinn shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the equipment be unable to accommodate the installation.
 - 8.4 Quinn shall not be liable for any defect or damage resulting from incorrect or faulty installation.
 - 8.5 The Customer acknowledges that Quinn is only responsible for parts that are replaced/supplied by Quinn and does not at all stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure.
 - 8.6 Any advice, recommendation, information, assistance or service provided by Quinn in relation to Equipment provided is given in good faith, is based on Quinn's own knowledge and experience and shall be accepted without liability on the part of Quinn and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Equipment.
 9. **Dimensions, Plans and Specifications**
 - 9.1 All customary industry tolerances shall apply to the dimensions and measurements of the Equipment unless the Customer and Quinn agree otherwise in writing.
 - 9.2 Quinn shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
 - 9.3 Where the Customer is to supply Quinn with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. Quinn shall not be liable whatsoever for any errors in the Equipment that are caused by incorrect or inaccurate data being supplied by the Customer.
 - 9.4 If the giving of an estimate or quotation for the supply of Equipment involves Quinn estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of Quinn's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
 - 9.5 Should the Customer require any changes to Quinn's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
 - 9.6 The Customer acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Quinn'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 Quinn;
 - (b) while Quinn may have provided information or figures to the Customer regarding the performance and/or sustainability of the Goods, the Customer acknowledges that Quinn has given these in good faith, and are estimates based on industry prescribed estimates.
 - 9.7 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
 10. **Access**
 - 10.1 The Customer shall ensure that Quinn has clear and free access to the work site at all times to enable them to undertake the Works. Quinn shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Quinn.
 11. **Compliance with Laws**
 - 11.1 The Customer agrees that the site will comply with any WorkSafe guidelines and the Health and Safety at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.
 - 11.2 Quinn has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed on the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, Quinn shall not be the person who controls the place of work in terms of the HSW Act.
 12. **Title**
 - 12.1 Quinn and the Customer agree that ownership of the Equipment shall not pass until:
 - (a) the Customer has paid Quinn all amounts owing to Quinn; and
 - (b) the Customer has met all of their other obligations to Quinn.
 - 12.2 Receipt by Quinn 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.
 - 12.3 It is further agreed that:
 - (a) until ownership of the Equipment passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Equipment and must return the Equipment to Quinn on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Equipment on trust for Quinn and must pay to Quinn the proceeds of any insurance in the event of the Equipment being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by Quinn shall be sufficient evidence of Quinn's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Quinn to make further enquiries;
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Equipment other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Equipment then the Customer must hold the proceeds of any such sale on trust for Quinn and must pay or deliver the proceeds to Quinn on demand;
 - (e) the Customer irrevocably authorises Quinn to enter any premises where Quinn believes the Equipment is kept and to recover possession of the Equipment;
 - (f) the Customer shall not charge or grant an encumbrance over the Equipment nor grant nor otherwise give away any interest in the Equipment while they remain the property of Quinn;
 - (g) Quinn may commence proceedings to recover the Price of the Equipment sold notwithstanding that ownership of the Equipment has not passed to the Customer.
 13. **Personal Property Securities Act 1999 ("PPSA")**
 - 13.1 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 Equipment and/or collateral (account) – being a monetary obligation of the Customer to Quinn for Works – that have previously been supplied and that will be supplied in the future by Quinn to the Customer.
 - 13.2 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 Quinn may reasonably require to register a financing statement and/or a financing charge statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Quinn for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Equipment charged thereby; and
 - (c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of Quinn.
 - 13.3 Quinn and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 13.5 Unless otherwise agreed to in writing by Quinn, the Customer waives its right to receive a verification statement in accordance with section 149 of the PPSA.
 - 13.6 The Customer shall unconditionally ratify any actions taken by Quinn under clauses 13.1 to 13.5.
 - 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
 - 13.8 The Customer indemnifies Quinn from and against all Quinn's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Quinn's rights under this clause.
 14. **Warranties**
 - 14.1 Subject to the conditions of warranty set out in clause 14.2 Quinn warrants that if any defect in any workmanship of Quinn or any issues with new Equipment becomes apparent and is reported to Quinn within twelve (12) months of the date of delivery (time being of the essence) then Quinn will either (at Quinn's sole discretion) replace or remedy the issues.
 - 14.2 The conditions applicable to the warranty given by clause 14.1 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 Equipment; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Quinn; or
 - (iii) any use of any Equipment otherwise than as for any application specified on a quote or order form; or
 - (iv) the continued use of any Equipment 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 does not apply to equipment servicing or upgrades, replacement parts or materials that are not new. The Customer is responsible for all travel and labour costs associated with replacing or repairing the Equipment under a warranty claim.
 - (c) the warranty shall cease and Quinn shall thereafter in no circumstances be liable under the terms of the warranty if the equipment is repaired, altered or overhauled without Quinn's consent.
 - (d) in respect of all claims Quinn 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.
 - 14.3 In the case of second hand parts or Equipment, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by Quinn as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded.
 15. **Consumer Guarantees Act 1993**
 - 15.1 If the Customer is acquiring Equipment for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Equipment by Quinn to the Customer.
 16. **Intellectual Property**
 - 16.1 Where Quinn has designed, drawn, written plans or a schedule of Works, or created any Equipment for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Quinn, and shall only be used by the Customer at Quinn's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Quinn.
 - 16.2 The Customer warrants that all designs, specifications or instructions given to Quinn will not cause Quinn to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Quinn against any action taken by a third party against Quinn in respect of any such infringement.
 - 16.3 The Customer agrees that Quinn may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Quinn has created for the Customer.
 17. **Default and Invoices of Default**
 - 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at Quinn's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 17.2 If the Customer owes Quinn any money the Customer shall indemnify Quinn from and against all costs and disbursements incurred by Quinn in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Quinn's collection agency costs, and bank charges).
 - 17.3 Without prejudice to Quinn's other remedies at law Quinn shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Quinn shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to Quinn becomes overdue, or in Quinn'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 Quinn;
 - (c) the Customer becomes insolvent or bankrupt, 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.
 18. **Cancellation**
 - 18.1 Without prejudice to any other rights or remedies Quinn may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice) then Quinn may suspend the Works immediately. Quinn will not be liable to the Customer for any loss or damage the Customer suffers because Quinn has exercised its rights under this clause.
 - 18.2 In the event that the Customer cancels the delivery of Works or Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Quinn as a direct result of the cancellation (including, but not limited to, any loss of profits).
 - 18.3 Cancellation of orders for products made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
 19. **Privacy Policy**
 - 19.1 Quinn may collect, hold and use personal information about the Customer such as your name and contact information (telephone number, email address) for the purposes of:
 - (a) contacting you about the Work or Equipment;
 - (b) creating, administering, and maintaining an account with us;
 - (c) collecting payments, including debt collection;
 - (d) enforcing our rights under these Terms;
 - 19.2 Quinn will request this information directly from the Customer and Quinn may, if necessary, share this information with credit reporting, credit enforcement or debt collection agencies. Quinn will store all personal information securely and comply with the obligations under the Privacy Act 2020.
 - 19.3 The Customer may request a copy of the personal information that Quinn holds about them and correct such information if necessary.
 - 19.4 The Customer authorises Quinn or Quinn's agent to:
 - (a) access, collect, retain and use any information about the Customer that is necessary for the purpose of assessing the Customer's creditworthiness; or
 - (i) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Quinn from the Customer directly or obtained by Quinn 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 to the suspension.
 20. **Suspension of Works**
 - 20.1 Where the Contract is subject to the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
 - (a) Quinn has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer; and
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.4 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 Quinn by a particular date; and
 - (iv) Quinn has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Quinn 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 Quinn exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights which would otherwise have been available to Quinn 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 Quinn suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes Quinn from continuing the Works or performing or complying with Quinn's obligations under this Contract, then without prejudice to Quinn's other rights and remedies, Quinn may suspend the Works immediately after serving on the Customer a written notice specifying a payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by Quinn as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
 - 20.2 If pursuant to any right conferred by this Contract, Quinn suspends the Works and the default that led to that suspension continues unremedied subject to clause 18.1 for at least ten (10) working days, Quinn shall be entitled to terminate the Contract, in accordance with clause 18.
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. **General**
 - 22.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall firstly be referred to mediation.
 - 22.2 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, legal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 22.3 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.
 - 22.4 Quinn shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Quinn of these terms and conditions (alternatively Quinn's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
 - 22.5 Quinn may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
 - 22.6 The Customer cannot licence or assign without the written approval of Quinn.
 - 22.7 Quinn may elect to subcontract out any part of the Works 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 Quinn's sub-contractors without the authority of Quinn.
 - 22.8 The Customer agrees that Quinn 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 Quinn to provide Works to the Customer.
 - 22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 - 22.10 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.