

### **1. Definitions**

- 1a "SWNZ" means Steelworks New Zealand Ltd its successors and assigns or any person acting on behalf of and with the authority of Steelworks New Zealand Ltd.
- 1b "Customer" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1c "Goods" means all Goods or Services supplied by SWNZ 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).
- 1d "Price" means the Price payable for the Goods as agreed between SWNZ and the Customer in accordance with clause 6 below.

### **2. Acceptance**

- 2a 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 the Goods.
- 2b These terms and conditions may only be amended with SWNZ's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and SWNZ.

### **3. Change in Control**

- 3a The Customer shall give SWNZ 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 name, address, contact phone/fax numbers, email address(es), or business practice). The Customer shall be liable for any loss incurred by SWNZ as a result of the Customer's failure to comply with this clause.

### **4. Quotations**

- 4a Quotations are based on details supplied by the Customer.
- 4b Any variations will be at the Customer's expense.
- 4c The Customer shall ensure that the quoted items correspond with the Customer's requirements.
- 4d The acceptance of SWNZ's quotation, and the terms and conditions of trade, shall be in writing. The acceptance shall constitute the Customer's instruction to commence work, unless advised in writing to the contrary.

### **5. Cancellation**

- 5a SWNZ 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 SWNZ shall repay to the Customer any money paid by the Customer for the Goods. SWNZ shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 5b In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by SWNZ as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 5c 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.

### **6. Price**

- 6a At SWNZ's sole discretion the Price shall be either:
- (i) as indicated on any invoice provided by SWNZ to the Customer; or
  - (ii) SWNZ's quoted price (subject to clause 6b) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. At the expiration of this period, SWNZ may vary the quotation.
- 6b SWNZ reserves the right to change the Price if a variation to SWNZ's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations in accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to SWNZ's in the cost of materials and labour) will be charged for on the basis of SWNZ's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 6c Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to SWNZ an amount equal to any GST SWNZ must pay for any supply by SWNZ under this or any other agreement 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.

### **7. Payment**

- 7a Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by SWNZ, which may be:
- (i) on delivery of the Goods;
  - (ii) for certain approved Customers, due twenty (20) days following the end of the month in which the invoice is dated. For a Customer to have such credit approved, SWNZ's "Application for Credit" form must be completed in full and approved by SWNZ prior to the work commencing.
  - (iii) the date specified on any invoice or other form as being the date for payment, or
  - (iv) failing any notice to the contrary, the date which is seven (7) days following the date or any invoice given to the Customer by SWNZ.
- 7b SWNZ may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall be based on an agreed percentage of work done to date, whether delivered to site or not, and the reasonable value of authorized variations.
- 7c 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 SWNZ nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7d Should the value of any amount invoiced be disputed by the Customer, then the details of the dispute should be clearly set out in writing within fourteen (14) days of the date of the invoice.
- 7e SWNZ may at any time require the Customer to pay for goods by bank cheque or post-dated cheque or (in addition to SWNZ's security interest in the goods) may require the Customer to procure such guarantees and securities as SWNZ considers necessary to secure to SWNZ payment for the goods.

### **8. Contract Documents**

- 8a The Customer will supply SWNZ with a full sized set of the contract drawings suitably marked or stamped "Approval for Construction" or similar. These drawings are to be of a standard complying with the HERA Report R4-106:2002 ("Code of Practice for Structural Steelwork Documentation") as published by the Steel Construction Industry of New Zealand.
- 8b Revised drawings shall be accompanied by a document transmittal notice or similar to verify receipt of the revisions by SWNZ.
- 8c All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless SWNZ and the Customer agree otherwise in writing.
- 8d SWNZ shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 8e Where the Customer is to provide SWNZ with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. SWNZ shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.

### **9. Delivery of Goods**

- 9a Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (i) the Customer or the Customer's nominated carrier takes possession of the Goods at SWNZ's address; or
  - (ii) SWNZ (or SWNZ's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

- 9b At SWNZ's sole discretion the cost of delivery is included in the Price.
- 9c The Customer shall make all arrangements necessary to take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then SWNZ shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9d Delivery or collection of the Goods to/by a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 9e SWNZ may deliver the Goods in separate installments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9f Any time or date given by SWNZ to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and SWNZ will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 9g The Customer is responsible for disposing of, at its own cost, all materials used in the packaging or delivery of Goods supplied by SWNZ.

#### **10. Risk**

- 10a 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.
- 10b If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, SWNZ is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SWNZ is sufficient evidence of SWNZ's rights to receive the insurance proceeds without the need for any person dealing with SWNZ to make further enquiries.
- 10c If the Customer requests SWNZ to leave Goods outside SWNZ'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.
- 10d SWNZ shall not be held liable for the quality of the works if the Customer does not follow SWNZ's recommendations as to the number of coats of paint required to obtain the final finish if the Customer chooses to accept a reduced Price based on fewer coats of paint.
- 10e SWNZ shall not be liable whatsoever for any loss or damage to the Goods (including, but not limited to, painted surfaces) that is caused by any other party.
- 10f The Customer acknowledges and accepts that SWNZ shall not be held responsible for deterioration of the Goods due to exposure to the elements after delivery has taken place.

#### **11. Site Access**

- 11a When SWNZ's quotation includes delivery to site, the provision of suitable access into the site for cranes and other heavy vehicles shall be provided by the Customer/Head Contractor.
- 11b The Customer shall ensure that SWNZ has clear and free access to the work site at all times to enable them to undertake the works. Suitable levelled hardstanding for mobile cranes in close proximity to the work area shall be made available. If a larger capacity crane is then necessary to erect the steel, the additional costs of hireage of the larger capacity crane will then be an extra to the quoted price.
- 11c The provision of suitable ramps to provide access from ground level up onto the floor slab shall be provided by the Customer/Contractor.
- 11d SWNZ 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 SWNZ.
- 11e It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks or cranes. The Customer agrees to indemnify SWNZ against all costs incurred by SWNZ in recovering such vehicles in the event they become bogged or otherwise immovable.
- 11f The provision of suitable laydown areas in close proximity to the work area shall be provided for the storage of the structural steelwork.

#### **12. Equipment Supply**

- 12a Unless noted otherwise in SWNZ's quotation, the Customer/Contractor shall provide at no cost SWNZ –
  - (i) suitably sized cranes for the hoisting of structural steel into place
  - (ii) scissorlifts, cherrypickers or other suitable mobile elevating work platforms
  - (iii) the supply, erection, dismantling of suitably placed scaffold, or other working platforms.

#### **13. Cast in items, steel fixings**

- 13a Where the quotation includes the supply of holding down bolts, cast in anchor plates or weld plates, then it is the Customer's/Contractor's responsibility to cast in the items to line and level and to within the specified tolerance.
- 13b The establishment of grid lines and RLs or other setout points, required for the accurate placement of the structural steelwork shall be established by the Customer/Contractor.
- 13c Should the Customer/Contractor cast in holding down bolts of weld plates/anchor plates and the like out of position, then any additional work required by SWNZ to modify the prefabricated steel to bring into the correct alignment will be a variation to SWNZ's contract price.

#### **14. Grouting / Packing**

- 14a The supply and installation of dry pack mortar or epoxy grout to end plates and base plates of steelwork is the Customer's responsibility unless noted otherwise on SWNZ's quote.
- 14b Packers and shim plates are included where shown on the drawings and to the sizes detailed. Additional packers and shim plates materials and labour required due to overcoming construction discrepancies will be a cost variation.

#### **15. Variations / Site Instructions**

- 15a Extras or variations to the contract should be confirmed in writing.
- 15b The instruction should clearly instruct SWNZ whether the variation is to proceed on a charge up basis, a schedule of rates basis, or be quoted as a variation price request. If no cost is involved the working should include Site Instruction Only.
- 15c Extra work required by the Customer and not forming part of the contract works should be in writing on the Customer's Purchase Order.

#### **16. Electric Power**

- 16a Single phase power outlets should be made available to within a reasonable distance of the work area. Power will be made available to SWNZ at no charge.
- 16b Site Welding – unless notified otherwise at the time of quoting, SWNZ expects 3 phase power via 30 amp Reyrolle outlets to be made available at no cost and in close proximity to the work area for running electric arc welders. If SWNZ is not advised to the contrary regarding the availability of 3 phase power, then the hireage costs of mobile diesel/petrol driven generators, including delivery and running costs, shall be deemed to be an extra to the quoted price.

#### **17. Title**

- 17a SWNZ and the Customer agree that ownership of the Goods shall not pass until:
  - (i) the Customer has paid SWNZ all amounts owing to SWNZ; and
  - (ii) the Customer has met all of its other obligations to SWNZ.
- 17b Receipt by SWNZ 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.
- 17c It is further agreed that:
  - (i) until ownership of the Goods passes to the Customer in accordance with clause 17a that the Customer is only a bailee of the Goods and must return the Goods to SWNZ on request.
  - (ii) the Customer holds the benefit of the Customer's insurance of the Goods on trust for SWNZ and must pay to SWNZ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (iii) the Customer must not sell, dispose or otherwise part with possession of the Goods other than in the ordinary course or 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 SWNZ and must pay or deliver the proceeds to SWNZ on demand.

- (iv) 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 SWNZ and must sell, dispose of or return the resulting product to SWNZ as it so directs.
  - (v) the Customer irrevocably authorizes SWNZ to enter any premises where SWNZ believes the Goods are kept and recover possession of the Goods.
  - (vi) SWNZ may recover possession of any Goods in transit whether or not delivery has occurred.
  - (vii) 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 SWNZ.
  - (viii) SWNZ may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 17d Until ownership passes, the Customer must keep full and complete records of the goods, give SWNZ the right to inspect the goods or any part of them at all reasonable times, must not change its name, address, or contact details without providing SWNZ with at least 30 days prior written notice.

## **18. Defects**

- 18a The Customer shall inspect the Goods on delivery and shall within ninety (90) days of delivery (time being of the essence) notify SWNZ of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford SWNZ 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 SWNZ has agreed in writing that the Customer is entitled to reject, SWNZ's liability is limited to either (at SWNZ's discretion) replacing the Goods or repairing the Goods.
- 18b Goods will not be accepted for return other than in accordance with [xx] above.

## **19. Warranty**

- 19a All warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise are, and all other liability of SWNZ, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law.
- 19b Insofar as SWNZ may be liable notwithstanding clause 19e, the total liability of SWNZ whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of SWNZ's obligations is limited to the lesser of:
- (i) to the price of Goods complained of;
  - (ii) the cost of repairing or replacing the defective goods; or
  - (iii) the actual loss or damage suffered by the Customer.
- 19c Except where statute expressly requires otherwise (and subject to clause 19e) SWNZ is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
- 19d Subject to clause 19e, while SWNZ will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by SWNZ in relation to the Goods or their use or application, SWNZ does not accept any liability or responsibility in response to that advice, recommendation, information, assistance or service.
- 19e 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 do not apply to the supply of Goods by SWNZ to the Customer.
- 19f Where the Customer is acquiring the Goods for the purpose of re-supplying them in trade, the Customer will:
- (i) include a provision in its terms of sale to the effect that the Act will not apply where a purchaser acquires or holds itself out as acquiring the Goods for the purposes of a business;
  - (ii) notify its purchasers of the effect of clause 19f(i); and
  - (iii) indemnify SWNZ for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by SWNZ as a result of the Customer failing to take the action required under this clause 19f.

## **20. Default and Consequences of Default**

- 20a If payment of the Goods is not made to SWNZ by the due date for payment, the Customer must pay, at SWNZ's discretion and without prejudice to any other remedy SWNZ may have at law, on demand default interest at a rate equal to 10% above the current base lending rate from time to time set by SWNZ's bankers from the due date for payments until the date when payment is actually made to SWNZ.
- 20b In the event that the Customer's payment is dishonoured for any reason, the Customer shall be liable for any dishonor fees incurred by SWNZ.
- 20c If the Customer owes SWNZ any money the Customer shall indemnify SWNZ from and against all costs and disbursements incurred by SWNZ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SWNZ's collection agency costs, and bank dishonor fees).
- 20d Without prejudice to any other remedies SWNZ may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SWNZ may suspend or terminate the supply of Goods to the Customer. SWNZ will not be liable to the Customer for any loss or damage the Customer suffers because SWNZ has exercised its rights under this clause.
- 20e Without prejudice to SWNZ's other remedies at law SWNZ shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SWNZ shall, whether or not due for payment, become immediately payable if:
- (i) any money payable to SWNZ becomes overdue, or in SWNZ's opinion the Customer will be unable to make a payment when it falls due;
  - (ii) 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
  - (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20f SWNZ may reclaim any Goods in the Customer's possession or control and dispose of them for its own benefit and for the purpose SWNZ may, without notice enter directly or by its agents or any premises where it believes Goods may be stored, without in any way being liable to any person.

## **21. Personal Property Securities Act 1999 ("PPSA")**

- 21a Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (i) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (ii) a security interest is taken in all Goods previously supplied by SWNZ to the Customer (if any) and all Goods that will be supplied in the future by SWNZ to the Customer.
- 21b The Customer undertakes to:
- (i) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SWNZ may reasonably require to register a financing statement or financing change statement on the Personal Property Security Register;
  - (ii) indemnify, and upon demand reimburse, SWNZ 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;
  - (iii) not register a financing change statement or a change demand without the prior written consent of SWNZ; and
  - (iv) immediately advise SWNZ or 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.
- 21c SWNZ and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 21d The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 21e Unless otherwise agreed to in writing by SWNZ, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 21f The Customer shall unconditionally ratify any actions taken by SWNZ under clauses 21a to 21e.

## **22. Security and Charge**

- 22a In consideration of SWNZ 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, 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.)
- 22b The Customer indemnifies SWNZ from and against all SWNZ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SWNZ's rights under this clause.

22c The Customer irrevocably appoints SWNZ and each director of SWNZ as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 22 including, but not limited to, signing any document on the Customer's behalf.

### **23. Buyer's Disclaimer**

23a The Customer hereby disclaims any right to rescind, or cancel any contract with SWNZ or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by SWNZ and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

### **24. Intellectual Property**

24a Where SWNZ has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of SWNZ.

24b The Customer warrants that all designs, specifications or instructions given to SWNZ will not cause SWNZ to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify SWNZ against any action taken by a third party against SWNZ in respect of any such infringement.

24c The Customer agrees that SWNZ may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SWNZ has created for the Customer.

### **25. Privacy Act 1993**

25a The Customer authorizes SWNZ or SWNZ's agent to:

- (i) access, collect, retain and use any information about the Customer;
  - a) including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
  - b) for the purpose of marketing products and services to the Customer.
- (ii) disclose information about the Customer, whether collected by SWNZ from the Customer directly or obtained by SWNZ 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.

25b Where the Customer is an individual the authorities under clause 25a are authorities or consents for the purposes of the Privacy Act 1993.

25c The Customer shall have the right to request SWNZ for a copy of the information about the Customer retained by SWNZ and the right to request SWNZ to correct any incorrect information about the Customer held by SWNZ.

### **26. Dispute Resolution**

26a All disputes and differences between the Customer and SWNZ touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

### **27. Compliance with Laws**

27a The Customer and SWNZ shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

27b The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.

27c The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

### **28. Construction Contracts Act 2002**

28a The Customer hereby acknowledges that:

- (i) SWNZ 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:
  - a) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
  - b) 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
  - c) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to SWNZ by a particular date; and
  - d) SWNZ has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (ii) If SWNZ suspends work, it:
  - a) is not in breach of contract; and
  - b) 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
  - c) is entitled to an extension of time to complete the contract; and
  - d) 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.
- (iii) if SWNZ exercises the right to suspend work, the exercise of that right does not:
  - a) affect any rights that would otherwise have been available to SWNZ under the Contractual Remedies Act 1979; or
  - b) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of SWNZ suspending work under this provision.

### **29. General**

29a The failure by SWNZ to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SWNZ'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.

29b 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.

29c SWNZ 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 of SWNZ of these terms and conditions (alternatively SWNZ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

29d SWNZ may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

29e The Customer agrees that SWNZ may amend these terms and conditions at any time. If SWNZ makes a change to these terms and conditions, then that change will take effect from the date on which SWNZ notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for SWNZ to provide Goods to the Customer.

29f 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.

29g The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.