



PROKEY LIMITED Terms & Conditions of Trade

1. INTERPRERATION

- 1.1 "the Contract" means the terms and conditions contained herein, together with any Quotation, Invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "the Company" means PROKEY Limited, its successors and assigns or any person acting on behalf of and with the authority of PROKEY Limited.
- 1.3 "the Customer" means the person(s), entities or any person acting on behalf and with the authority of the Customer requesting PPOKEY to provide the Services as specified in any Quotation, Invoice or other documentation, and:
- (a) If there is more than one Customer, is a preference 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) Include the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "the Goods" means all Goods or Services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "the Price" means the Price payable (Plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Company and the Customer in accordance with clause 6 below.

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 the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 In the event that the Company is required to provide the Services urgently, that may require the Company's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/ or Public Holidays) then the Company reserves the right to charge the Customer additional Labour costs (penalty rate will apply), unless otherwise agreed between the Company and the Customer.
- 2.5 The Customer acknowledges that:
- (a) The supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Company and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods request exceeds the Customer credit limit and/ or the account exceeds the payment terms, the Company reserves the right to refuse delivery; and
 - (c) The supply of Goods for accepted orders may be subject to availability) and if, for any reason, Goods are not or cease to be available, the Company reserves the right to vary the Price with alternative Goods (or components of the Goods) as per clause 5.2, subject to prior confirmation and agreement of both parties.
- 2.6 The Customer agrees that they shall upon request from the Company provide evidence that:
- (a) They are the owner of the property upon which the Goods are to be provided (including, but not limited to the cutting of keys providing access/ entry into property as a result of being locked out ect.) or Services are undertaken; or
 - (b) Where the Customer is not the owner of the property, that they have the consent of the owner for the premises upon which the Services are undertaken or Goods to be provided.
- 2.7 In the event that the Goods and/ or Services provided by the Company are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honor their obligation for payment for such transactions invoiced by the Company and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.8 The Customer shall ensure that all voice codes, passwords, radio keys and other security devices are kept secure and provided only to those persons who reasonably require access to the premises.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that 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 the Company shall, without prejudice, accept to liability in respect of any alleged or actual error(s) and/ or omission (s):
- (a) Resulting from an inadvertent mistake made by the Company in formation and/ or administration of the Contract; and/ or
 - (b) Contained in/ omitted from any literature (hard copy and/ or electronic) supplied by the Company in respect of the services.
- 3.2 In the event such an error and/ or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/ or wilful misconduct of the Company; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. AUTHORISED REPRESENTATIVES

- 4.1 The Customer acknowledges that the Company shall (for the duration of the Services) liaise directly with one (1) authorized representative, and that once introduced as such to the Company, that person shall have the full authority of the Customer order any Services, and/ or request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to the Company for all additional costs incurred by the Company (including the Company's profit margin) in providing any Services, or variation/s requested thereto by the Customer's duly authorized representative.
- 4.2 The Customer shall absolve the Company from any claims, costs, and damages arising from the performance of such Services.

5. CHARGE IN CONTROL

- 5.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/ or any other changes in the Customer's details (including but not limited to, changes in the Customer's name, address or email address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

6. PRICE AND PAYMENT

- 6.1 At the Company's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Company to the Customer; or
 - (b) the Company's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Company reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from the Company's third party suppliers, then the Company reserves the right to provide alternative Goods; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, obscured site defects which require remedial work (e.g. poor existing wiring, etc.), health hazards and safety considerations (such as the discovery of asbestos) etc.) which are only discovered on commencement of the Services; or
 - (e) in the event of increases to the Company in the cost of labour materials which are beyond the Company's control.



- 6.3 Variations will be charged for on the basis of the Company's quotation, and will be detailed in writing and shown as variations on the Company's invoice. The Customer shall be required to respond to any variation submitted by the Company within ten (10) working days. Failure to do so will entitle the Company to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Company's sole discretion a deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with the Company's payment schedule;
 - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is emailed to the Customer's email address;
 - (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 the Company.
- 6.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Company.
- 6.7 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 the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company 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. DELIVERY OF GOODS**
- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Company (or the Company's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At the Company's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 The Company may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by the Company for delivery of the Goods is an estimate only and the Company 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. RISK**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 8.3 If the Customer requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 Where the Company is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Company shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.5 The Company shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Company accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 Where the Company gives advice or recommendations to the Customer, or the Customer's agent, with specific instructions regarding the use of the Goods and such advice or recommendations are not acted upon then the Company shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent purchase of the Goods.
- 8.7 Where the Company is to supply Goods (including but not limited to, doors etc.) which require the Customer to paint and seal the Goods, the Company will not be liable for any loss, costs or damages where the Customer does not follow the Company's recommendation as to the number of coats of paint and the use of a sealant on installation of the Goods.
- 8.8 Where the Customer has engaged in the Company for the purposes of gaining access/entry to a property/vehicle as a result a lock out, the Customer acknowledges and accepts that:
- (a) the Company is not acting in an unlawful and fraudulent manner and is not deemed to be a break-in; and
 - (b) the Services will not infringe on the right of other person's or the property's security; and
 - (c) the Company will not be liable for any costs, damages, losses and claims as a result of any damage to the property/vehicle in the provision of Services.
- 8.9 The Customer acknowledges and agrees that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Company'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 the Company; and
 - (b) while the Company may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that the Company has given these in good faith, and are estimates which are variable due to factors out of the Company's control; and
 - (c) the Company is only responsible for Goods that are replaced by the Company and that in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify the Company against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising; and
 - (d) the Company does not warrant that the Goods supplied by the Company will render the premises, or any occupant of the premises, secure. The Company shall not be liable for any loss (including consequential loss) or damage suffered by the Customer, whether arising from the Company's negligence or otherwise, resulting from the Customer's use of or reliance upon the Goods; and
 - (e) the Company shall not be held liable for any damage to any glass surfaces as a result of installing Goods and/or in the provision of the Services.
- 8.10 The Company will not be responsible:
- (a) for any compliance of building warrant of fitness around evacuation plans, disability access and regulations around the use of deadlocks. It shall be the responsibility of the Customer to ensure that the Goods ordered are suitable for their intended use; and
 - (b) for any inadvertent compromise of any lockdown plans that schools may have.
- 8.11 The Customer shall, at their own expense, maintain the Goods in good working order and in accordance with the manufacturer's requirements, including but not limited to, recharging or replacing the batteries on a timely basis.
- 9. INSURANCE CLAIMS**
- 9.1 If the Customer has insurance or other contractual arrangements for the payment of charges due under this Contract, this will not affect the Customer's personal liability to pay all charges due under this Contract, except that the Customer's liability will be reduced pro-rata to the extent that payments are made to the Company from other such sources. The Customer also agrees that they shall be liable and make payment when due for any insurance excess where necessary.
- 9.2 Any work undertaken which is part of an insurance claim is undertaken with the understanding that should the claim be declined, or payment of the claim delayed, the Customer is liable for payment of the full Price.
- 10. ACCESS**
- 10.1 The Customer shall ensure that Nelson Alarms has clear and free access to the site at all times to enable them to undertake the Services. The Company 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 the Company.



11. UNDERGROUND / HIDDEN LOCATIONS

- 11.1 Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground/hidden services on the site and clearly mark the same. The underground/hidden mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fiber optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst the Company will take all care to avoid damage to any underground/hidden services the Customer agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. COMPLIANCE WITH LAWS

- 12.1 The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

13. TITLE

- 13.1 The Company and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Company all amounts owing to the Company; and
 - (b) the Customer has met all of its other obligations to the Company.
- 13.2 Receipt by the Company 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.
- 13.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to the Company on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs;
 - (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods;
 - (f) the Company may recover possession of any Goods in transit whether or not delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company;
 - (h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Company for Services – that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- 14.2 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 the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Company; and
 - (d) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Customer shall unconditionally ratify any actions taken by the Company under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. SECURITY AND CHARGE

- 15.1 In consideration of the Company 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).
- 15.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 15.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the Customer's behalf.

16. DEFECTS

- 16.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company 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 the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) the Company has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (c) the Company will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.3 The Company may (in its discretion) accept the return of non-defective Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 16.4 Subject to clause 16.1, non-stocklist/indent items or Goods made to the Customer's specifications are not acceptable for credit or return.



17. WARRANTY

17.1 Subject to the conditions of warranty set out in clause 17.2 the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within seven (7) days of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) replace or remedy the workmanship.

17.2 The conditions applicable to the warranty given by clause 17.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (i) failure on the part of the Customer to properly maintain any Goods; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.

(c) in respect of all claims the Company 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.

17.3 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

18. CONSUMER GUARANTEES ACT 1993

18.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Customer.

19. DEFAULT AND CONSEQUENCES OF DEFAULT

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).

19.3 Further to any other rights or remedies the Company may have under this Contract, if a Customer has made payment to the Company, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

19.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Company becomes overdue, or in the Company'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 the Company;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. CANCELLATION

20.1 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.

20.2 The Company 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 the Company shall repay to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.3 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 the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).

20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

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 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.2 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 Auckland Courts of New Zealand.

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

22.4 The Company may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

22.5 The Customer cannot licence or assign without the written approval of the Company.

22.6 The Company may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Company's sub-contractors without the authority of the Company.

22.7 The Customer agrees that the Company 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 the Company to provide Goods to the Customer.

22.8 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.

22.9 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.