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## Genweld New Zealand Limited T/A Genweld NZ – Terms & Conditions of Trade

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### 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 "Genweld" means Genweld New Zealand Limited T/A Genweld NZ, its successors and assigns or any person acting on behalf of and with the authority of Genweld New Zealand Limited T/A Genweld NZ.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Genweld to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Genweld to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "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.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Genweld and the Client in accordance with clause 5 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Genweld and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Genweld 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.
- 2.7 These terms and conditions may be meant to be read in conjunction with Genweld's Hire Form, and:
- (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Genweld 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 Genweld in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Genweld 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 Genweld; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

### 4. Change in Control

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

### 5. Price and Payment

- 5.1 At Genweld's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Genweld to the Client; or
  - (b) the Price as at the date of Delivery of the Goods according to Genweld's current price list; or
  - (c) the Genweld's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Genweld reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested (including due to inaccuracies in quantities or dimensions or other information supplied to Genweld for quotation purposes); or
  - (b) if a variation to the Services originally scheduled (including hours or work, work method, or any applicable plans, drawings and/or specifications) is requested; or

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**Genweld New Zealand Limited T/A Genweld NZ – Terms & Conditions of Trade**

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- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather, obscured Site defects such as unsuitable hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring/cabling, etc., or where the Site is non-compliant with engineering specifications and requires remedial work, etc.), which are only discovered on commencement of the Services; or
  - (d) as a result of an increase in Genweld's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services or due to relevant industry awards (e.g. Site allowance and severance pay), or due to fluctuations in currency exchange rates, which are outside the control of Genweld; or
  - (e) in the event of increases to the Contractor in the cost of labour or materials which are beyond Genweld's control.
- 5.3 At Genweld's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Genweld, which may be:
- (a) on Delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Genweld's payment schedule;
  - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- 5.5 Payment may be made by cheque, electronic/on-line banking or by any other method as agreed to between the Client and Genweld.
- 5.6 Genweld may in its discretion allocate any payment received from the Client towards any invoice that Genweld determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Genweld may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Genweld, payment will be deemed to be allocated in such manner as preserves the maximum value of Genweld's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.7 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Genweld nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Genweld is a claim made under the Construction Contracts Act 2002.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Genweld an amount equal to any GST Genweld must pay for any supply by Genweld under this or any other Contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Services**
- 6.1 Subject to clause 6.2 it is Genweld's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Genweld claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Genweld's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify Genweld that the site is ready.
- 6.3 At Genweld's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.4 Genweld 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.
- 6.5 Any time specified by Genweld for delivery of the Goods is an estimate only and Genweld will not be liable for any loss or damage incurred by the Client 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 Genweld is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Genweld shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 7.1 If Genweld retains ownership of the Goods under clause 11 then:
- (a) where Genweld is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
    - (i) the Client or the Client's nominated carrier takes possession of the Goods at Genweld's address; or
    - (ii) the Goods are delivered by Genweld or Genweld's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where Genweld is to both supply and install Goods then Genweld shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Genweld to leave Goods outside Genweld's premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 7.3 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, or dangerous access to installation sites) that Genweld, or employees of Genweld, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Genweld shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.2 above) until Genweld is satisfied that it is safe for the installation to proceed.

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## Genweld New Zealand Limited T/A Genweld NZ – Terms & Conditions of Trade

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- 7.4 The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.
- 7.5 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Genweld 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.
- 7.6 The Client acknowledges that Goods supplied may:
- exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Genweld 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; and
  - fade or change colour over time; and
  - expand, contract or distort as a result of exposure to heat, cold, weather; and
  - mark or stain if exposed to certain substances; and
  - be damaged or disfigured by impact or scratching.
- 8. Dimensions, Plans and Specifications**
- 8.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods, unless Genweld and the Client agree otherwise in writing.
- 8.2 Genweld shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Genweld accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9. Other Tradesmen**
- 9.1 Genweld shall not be liable for any claim for losses, damages or costs arising from defective work or materials provided by other tradesmen. It shall be the Client's responsibility to ensure the work of other tradesmen installing the Goods provided by Genweld or other interactive and/or supportive components as per the manufacturer's instructions or recommendations.
- 10. Access**
- 10.1 The Client shall ensure that Genweld has clear and free access to the work site at all times to enable them to deliver and/or install the Goods. Genweld 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 Genweld.
- 10.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, cranes or other lifting equipment as may be deemed necessary by Genweld.
- 11. Compliance with Laws**
- 11.1 The Client and Genweld 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, including any WorkSafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.2 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Genweld agrees at all times comply with sections 29 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or if in the event that they may be acting as a subcontractor for the Client's where the Client has engaged a thirty party head contractor.
- 11.3 Where applicable, if Genweld is required to undergo any induction training for situations outside normal industry standard procedures, any costs incurred by Genweld in attending such induction shall be charged as a variation in accordance with clause 5.2.
- 11.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 12. Title**
- 12.1 Genweld and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid Genweld all amounts owing to Genweld; and
  - the Client has met all of its other obligations to Genweld.
- 12.2 Receipt by Genweld 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 until ownership of the Goods passes to the Client in accordance with clause 12.1:
- the Client is only a bailee of the Goods and must return the Goods to Genweld on request;
  - the Client holds the benefit of the Client's insurance of the Goods on trust for Genweld and must pay to Genweld the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Genweld and must pay or deliver the proceeds to Genweld on demand;
  - the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Genweld and must sell, dispose of or return the resulting product to Genweld as it so directs;
  - the Client irrevocably authorises Genweld to enter any premises where Genweld believes the Goods are kept and recover possession of the Goods;
  - the Genweld may recover possession of any Goods in transit whether or not Delivery has occurred;
  - the Client 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 Genweld;

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**Genweld New Zealand Limited T/A Genweld NZ – Terms & Conditions of Trade**

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(h) the Genweld may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**13. Personal Property Securities Act 1999 (“PPSA”)**

- 13.1 Upon assenting to these terms and conditions in writing the Client 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 Client to Genweld for Services – that have previously been supplied and that will be supplied in the future by Genweld to the Client.
- 13.2 The Client 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 Genweld may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Genweld 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 Genweld; and
  - (d) immediately advise Genweld 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.
- 13.3 The Genweld and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client 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 Genweld, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by Genweld 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.

**14. Security and Charge**

- 14.1 In consideration of Genweld agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Genweld from and against all Genweld’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Genweld’s rights under this clause.
- 14.3 The Client irrevocably appoints Genweld and each director of Genweld as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client’s behalf.

**15. Defects**

- 15.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Genweld of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Genweld an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Genweld has agreed in writing that the Client is entitled to reject, Genweld’s liability is limited to either (at Genweld’s discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) the Genweld has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client’s cost within seven (7) days of the Delivery date; and
  - (c) the Genweld 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.
- 15.3 Genweld will not accept the return of non-defective Goods for credit.
- 15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Client’s specifications are not acceptable for credit or return.

**16. Warranty**

- 16.1 Subject to the conditions of warranty set out in clause 16.2 Genweld warrants that if any defect in any workmanship of Genweld becomes apparent and is reported to Genweld within twelve (12) months of the date of Delivery (time being of the essence) then Genweld will either (at Genweld’s sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 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 Client to properly maintain any Goods; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Genweld; 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 Genweld shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Genweld’s consent.
  - (c) in respect of all claims Genweld shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client’s claim.

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## Genweld New Zealand Limited T/A Genweld NZ – Terms & Conditions of Trade

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- 16.3 For Goods not manufactured by Genweld, the warranty shall be the current warranty provided by the manufacturer of the Goods. Genweld 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.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Genweld to the Client.
- 18. Intellectual Property**
- 18.1 Where Genweld has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Genweld. Under no circumstances may such designs, drawings and documents be used without the express written approval of Genweld.
- 18.2 The Client warrants that all designs, specifications or instructions given to Genweld will not cause Genweld to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Genweld against any action taken by a third party against Genweld in respect of any such infringement.
- 18.3 The Client agrees that Genweld may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Genweld has created for the Client.
- 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 Genweld's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Genweld any money the Client shall indemnify Genweld from and against all costs and disbursements incurred by Genweld in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Genweld's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Genweld may have under this Contract, if a Client has made payment to Genweld, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Genweld under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to Genweld's other remedies at law Genweld shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Genweld shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Genweld becomes overdue, or in Genweld's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by Genweld;
  - (c) the Client 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 Client or any asset of the Client.
- 20. Cancellation**
- 20.1 Without prejudice to any other rights or remedies Genweld may have, if at any time the Client 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 Client of such notice/s) then Genweld may suspend the Services immediately. Genweld will not be liable to the Client for any loss or damage the Client suffers because Genweld has exercised its rights under this clause.
- 20.2 The Genweld 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 Client. On giving such notice Genweld shall repay to the Client any money paid by the Client for the Goods. Genweld shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Genweld 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 Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by Genweld is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. Genweld acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Genweld acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Genweld that may result in serious harm to the Client, Genweld will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Genweld in respect of Cookies where transactions for purchases/orders transpire directly from Genweld's website. Genweld agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and

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## Genweld New Zealand Limited T/A Genweld NZ – Terms & Conditions of Trade

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(c) reports are available to Genweld when Genweld sends an email to the Client, so Genweld may collect and review that information (“collectively Personal Information”)

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Genweld’s website.

21.3 The Client authorises Genweld or Genweld’s agent to:

- (a) access, collect, retain and use any information about the Client;
  - (i) (including, name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client’s creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by Genweld from the Client directly or obtained by Genweld 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 Client.

21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.

21.5 The Client shall have the right to request Genweld for a copy of the Personal Information about the Client retained by Genweld and the right to request Genweld to correct any incorrect Personal Information about the Client held by Genweld.

### 22. Dispute Resolution

22.1 All disputes and differences between the Client and Genweld 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.

### 23. Suspension of Services

23.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:

- (a) Genweld 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 Client, and:
  - (i) the payment is not paid in full by the due date for payment in accordance with clause 5.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
  - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the Client has not complied with an adjudicator’s notice that the Client must pay an amount to Genweld by a particular date; and
  - (iv) Genweld has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if Genweld 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 Client or by any person claiming through the Client; 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 Genweld exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to Genweld under the Contract and Commercial Law Act 2017; or
  - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Genweld suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes Genweld from continuing the Services or performing or complying with Genweld’s obligations under this Contract, then without prejudice to Genweld’s other rights and remedies, Genweld may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Genweld as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

23.2 If pursuant to any right conferred by this Contract, Genweld suspends the Services and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, Genweld shall be entitled to terminate the Contract, in accordance with clause 20.

### 24. Service of Notices

24.1 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.

24.2 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.

### 25. Trusts

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**Genweld New Zealand Limited T/A Genweld NZ – Terms & Conditions of Trade**

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- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Genweld may have notice of the Trust, the Client covenants with Genweld as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Client will not without consent in writing of Genweld (the Genweld will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 26. General**
- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 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 Auckland Courts of New Zealand.
- 26.4 The Genweld shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Genweld of these terms and conditions (alternatively Genweld's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.5 The Genweld may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of Genweld.
- 26.7 The Genweld 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 Client agrees and understands that they have no authority to give any instruction to any of Genweld's sub-contractors without the authority of Genweld.
- 26.8 The Client agrees that Genweld may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Genweld to provide Goods to the Client.
- 26.9 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.
- 26.10 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.