

1. Definitions

- 1.1 “The Naked Painting Company Ltd” means The Naked Painting Company Ltd, its successors and assigns or any person acting on behalf of and with the authority of The Naked Painting Company Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by The Naked Painting Company Ltd 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).
- 1.4 “Documentation” means any documents, designs, drawings or other materials provided, utilised or created incidentally by The Naked Painting Company Ltd in the course of it conducting, or providing to the Client, any Services.
- 1.5 “Price” means the Price payable for the Goods as agreed between The Naked Painting Company Ltd 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 These terms and conditions may only be amended with The Naked Painting Company Ltd’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and The Naked Painting Company Ltd.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to The Naked Painting Company Ltd as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any materials or Services on the Client’s behalf and/or to request any variation to the works on the Client’s behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies The Naked Painting Company Ltd in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise The Naked Painting Company Ltd in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to The Naked Painting Company Ltd for all additional costs incurred by The Naked Painting Company Ltd (including The Naked Painting Company Ltd’s profit margin) in providing any works, materials, services or variation/s requested by the Buyer’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give The Naked Painting Company Ltd 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, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by The Naked Painting Company Ltd as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At The Naked Painting Company Ltd’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by The Naked Painting Company Ltd to the Client; or
 - (b) The Naked Painting Company Ltd’s quoted or estimated 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 The Naked Painting Company Ltd reserves the right to change the Price:
 - (a) if a variation to the Goods which are to supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, obscured building defects, prerequisite work by any third party not being completed, change of

design, inaccurate measurements provided by the Client, hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services; or

(d) in the event of increases to The Naked Painting Company Ltd in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond The Naked Painting Company Ltd's control.

- 5.3 At The Naked Painting Company Ltd's sole discretion a non-refundable deposit of thirty percent (30%) 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 The Naked Painting Company Ltd, which may be:
- (a) on completion of the Services;
 - (b) 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;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by The Naked Painting Company Ltd.
- 5.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and The Naked Painting Company Ltd.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to The Naked Painting Company Ltd an amount equal to any GST The Naked Painting Company Ltd must pay for any supply by The Naked Painting Company Ltd under this or any other agreement 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. Delivery of Services

- 6.1 Subject to clause 6.2 it is The Naked Painting Company Ltd'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 the completion date extended by whatever time is reasonable in the event that The Naked Painting Company Ltd claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond The Naked Painting Company Ltd'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 The Naked Painting Company Ltd that the site is ready.
- 6.3 At The Naked Painting Company Ltd's sole discretion the cost of delivery is included in the Price.
- 6.4 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then The Naked Painting Company Ltd shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.5 Any time or date given by The Naked Painting Company Ltd to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and The Naked Painting Company Ltd will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Risk

- 7.1 If The Naked Painting Company Ltd retains ownership of the Goods under clause 13.1 then:
- (a) where The Naked Painting Company Ltd 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 The Naked Painting Company Ltd's address; or
 - (ii) the Goods are delivered by The Naked Painting Company Ltd or The Naked Painting Company Ltd's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where The Naked Painting Company Ltd is to both supply and install Goods then The Naked Painting Company Ltd 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 The Naked Painting Company Ltd to leave Goods outside The Naked Painting Company Ltd'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 If The Naked Painting Company Ltd has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 7.4 If during the provisions of the Services it is discovered that the Services required shall exceed the original estimated and/or quoted cost to which the Client instructs The Naked Painting Company Ltd to cease all Services, then the Client acknowledges and agrees to indemnify The Naked Painting Company Ltd all costs incurred in reassembling the goods (including, but not limited to, any new parts required (as some components when removed during the dismantling process often prove not reusable) for the reassemble.

8. Accuracy of Client's Plans

- 8.1 The Naked Painting Company Ltd shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client or the Client's agent, however, in the event that The Naked Painting Company Ltd deems the plans to be inaccurate or impracticable to execute the Services then The Naked Painting Company Ltd shall contact the Client immediately and all Services shall cease until such time as the plans are either reviewed or altered. The Client also agrees that The Naked Painting Company Ltd shall not be liable for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information for any such delays beyond The Naked Painting Company Ltd's control.

9. Access

- 9.1 The Client shall ensure that The Naked Painting Company Ltd has clear and free access to the work site at all times to enable them to undertake the Services. The Naked Painting Company Ltd 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 The Naked Painting Company Ltd.

10. Compliance with Laws

- 10.1 The Client and The Naked Painting Company Ltd 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, including but not limited to following the Code of Practice under the Hazardous Substances and New Organisms (HSNO) Act 1996 and applicable amendments.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 10.3 The Client 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.

11. Title

- 11.1 The Naked Painting Company Ltd and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid The Naked Painting Company Ltd all amounts owing to The Naked Painting Company Ltd; and
 - (b) the Client has met all of its other obligations to The Naked Painting Company Ltd.
- 11.2 Receipt by The Naked Painting Company Ltd 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Goods and must return the Goods to The Naked Painting Company Ltd on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for The Naked Painting Company Ltd and must pay to The Naked Painting Company Ltd the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) 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 The Naked Painting Company Ltd and must pay or deliver the proceeds to The Naked Painting Company Ltd on demand.

- (d) 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 The Naked Painting Company Ltd and must sell, dispose of or return the resulting product to The Naked Painting Company Ltd as it so directs.
- (e) the Client irrevocably authorises The Naked Painting Company Ltd to enter any premises where The Naked Painting Company Ltd believes the Goods are kept and recover possession of the Goods.
- (f) The Naked Painting Company Ltd may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) 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 The Naked Painting Company Ltd.
- (h) The Naked Painting Company Ltd may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 1999 (“PPSA”)

- 12.1 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 previously supplied by The Naked Painting Company Ltd to the Client (if any) and all Goods that will be supplied in the future by The Naked Painting Company Ltd to the Client.
- 12.2 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 The Naked Painting Company Ltd 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 Naked Painting Company Ltd 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 a financing change statement or a change demand without the prior written consent of The Naked Painting Company Ltd; and
 - (d) immediately advise The Naked Painting Company Ltd 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.
- 12.3 The Naked Painting Company Ltd and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by The Naked Painting Company Ltd, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by The Naked Painting Company Ltd under clauses 14.1 to 14.5.

13. Security and Charge

- 13.1 In consideration of The Naked Painting Company Ltd 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).
- 13.2 The Client indemnifies The Naked Painting Company Ltd from and against all The Naked Painting Company Ltd’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising The Naked Painting Company Ltd’s rights under this clause.
- 13.3 The Client irrevocably appoints The Naked Painting Company Ltd and each director of The Naked Painting Company Ltd as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client’s behalf (or any guarantor) including the signing of a mortgage over any of the client’s land or guarantor’s ;and to secure payment such mortgage to be on terms usually inserted by the lawyer for the Naked Painting Company Ltd.

14. Client’s Disclaimer

- 14.1 The Client hereby disclaims any right to rescind, or cancel any contract with The Naked Painting Company Ltd or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by The

Naked Painting Company Ltd and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

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 The Naked Painting Company Ltd of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford The Naked Painting Company Ltd 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 The Naked Painting Company Ltd has agreed in writing that the Client is entitled to reject, The Naked Painting Company Ltd's liability is limited to either (at The Naked Painting Company Ltd's discretion) replacing the Goods or repairing the Goods.

16. Returns

- 16.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) The Naked Painting Company Ltd has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) The Naked Painting Company Ltd will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) 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.
- 16.2 The Naked Painting Company Ltd may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 16.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

17. Warranty

- 17.1 Subject to the conditions of warranty set out in clause 19.2 The Naked Painting Company Ltd warrants that if any defect in any workmanship of The Naked Painting Company Ltd becomes apparent and is reported to The Naked Painting Company Ltd within twelve (12) months of the date of delivery (time being of the essence) then The Naked Painting Company Ltd will either (at The Naked Painting Company Ltd's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by clause 19.1 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 The Naked Painting Company Ltd; 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 Naked Painting Company Ltd shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without The Naked Painting Company Ltd's consent.
 - (c) in respect of all claims The Naked Painting Company Ltd 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.
- 17.3 For Goods not manufactured by The Naked Painting Company Ltd, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Naked Painting Company Ltd 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.
- 17.4 To the extent permitted by statute, no warranty is given by The Naked Painting Company Ltd as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Naked Painting Company Ltd shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

18. Consumer Guarantees Act 1993

18.1 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 The Naked Painting Company Ltd to the Client.

19. Intellectual Property

19.1 The Naked Painting Company Ltd shall retain ownership of the copyright to all Documentation produced by The Naked Painting Company Ltd during the course of the Works. The Client shall only have a licence to use such Documentation for the purpose of the individual brief supplied and is not entitled to any additional use without The Naked Painting Company Ltd's express approval in writing.

19.2 If the Client is in breach of any obligation under these terms and conditions (including those relating to payment), The Naked Painting Company Ltd may revoke the licence referred to in clause 21.1.

19.3 The Client acknowledges that any specifications prepared by The Naked Painting Company Ltd have been prepared taking into account the Client's particular instructions and requirements for the project and that the specifications are for the private and confidential use of the Client. The specifications shall not be reproduced in whole or in part nor relied upon by any third parties for any use whatsoever without the express authority of The Naked Painting Company Ltd.

19.4 The Naked Painting Company Ltd shall accept no duty or responsibility (including in negligence) and disclaims all liability of any nature whatsoever to any third party that makes use of the specifications without the express authority of The Naked Painting Company Ltd or who uses the specifications in a manner that is outside of the purpose for which the specifications were originally prepared.

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

19.6 The Client agrees that The Naked Painting Company Ltd may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which The Naked Painting Company Ltd has created for the Client.

20. Default and Consequences of Default

20.1 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 Naked Painting Company Ltd's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

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

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

- (a) any money payable to The Naked Painting Company Ltd becomes overdue, or in The Naked Painting Company Ltd's opinion the Client will be unable to make a payment when it falls due;
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Dispute Resolution

21.1 All disputes and differences between the Client and The Naked Painting Company Ltd touching and concerning this agreement may be dealt with by adjudication under the provisions of the Construction Contracts Act 2002 if applicable 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.

22. Cancellation

- 22.1 The Naked Painting Company Ltd 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 The Naked Painting Company Ltd shall repay to the Client any money paid by the Client for the Goods. The Naked Painting Company Ltd shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 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 The Naked Painting Company Ltd as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.3 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.

23. Construction Contract Act 2002

- 23.1 The Client hereby expressly acknowledges that:
- (a) The Naked Painting Company Ltd 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 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 The Naked Painting Company Ltd by a particular date; and
 - (iv) The Naked Painting Company Ltd has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if The Naked Painting Company Ltd 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 The Naked Painting Company Ltd exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to The Naked Painting Company Ltd under the Contractual Remedies Act 1979; 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 The Naked Painting Company Ltd suspending work under this provision.
- 23.2 Payment Claims: If under section 22 of the Construction Contracts Act 2020 a Payment Claim is served on the client then the period for the Client to respond with a Payment Schedule is reduced to 10 Working Days from service of the Payment Claim.

24.

25. General

- 25.1 The failure by The Naked Painting Company Ltd to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect The Naked Painting Company Ltd'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.
- 25.2 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 Blenheim Courts of New Zealand.
- 25.3 The Naked Painting Company Ltd 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 The Naked Painting Company Ltd of these terms and conditions (alternatively The Naked Painting Company Ltd's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

- 25.4 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 The Naked Painting Company Ltd nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 The Naked Painting Company Ltd may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.6 The Client agrees that The Naked Painting Company Ltd may amend these terms and conditions at any time. If The Naked Painting Company Ltd makes a change to these terms and conditions, then that change will take effect from the date on which The Naked Painting Company Ltd notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for The Naked Painting Company Ltd to provide Goods to the Client.
- 25.7 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.
- 25.8 The Client 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.

26. GUARANTEE AND INDEMNITY:

In consideration of the Naked Panting Company Ltd agreeing to perform the Work for the Client at the Client's request, I/we:

- 26.1 Unconditionally guarantee to Naked Panting Company Ltd the due and punctual payment by the Client of all moneys payable in respect of that Work and the performance of all obligations of the Client in respect of that Work in accordance with the Terms of Trade set out on the reverse side of this form as and when the same become due and payable by the Customer.
- 26.2 Agree to be deemed as principal debtor for all accounts held by the Client with Naked Panting Company Ltd
- 26.3 Agree that this guarantee and indemnity will be a continuing guarantee and indemnity and will not be discharged by any settlement or payment of account and that this guarantee and indemnity is both joint and several.
- 26.4 Agree that our liability under this guarantee and indemnity will not be discharged, abrogated, prejudiced or affected by:
- 26.5 The granting of time, credit or the indulgence or other concession to the Client;
- 26.6 Any alteration, modification, variation or addition to any agreement in respect of the supply of goods and services; or
- 26.7 Any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, my/our obligations under this guarantee and indemnity or any powers or remedies conferred on Naked Panting Company Ltd by this guarantee and indemnity or by law.
- 26.8 Indemnify Naked Panting Company Ltd against all losses Naked Panting Company Ltd may incur or suffer should the Client default in the performance of any obligations to be performed by the Client under above Terms of Trade.
- 26.9 6. I/We confirm that I/we have been advised by Naked Panting Company Ltd that I/we should seek legal advice before signing this guarantee and indemnity.

Signed by the Guarantor:

Dated